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ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩កញ្ញា២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

Before:	**Judge NIL Nonn, President** **Judge Silvia CARTWRIGHT** **Judge YA Sokhan** **Judge Jean-Marc LAVERGNE** **Judge YOU Ottara**
Greffiers:	**LIM Suy-Hong, Matteo CRIPPA, SE Kolvuthy, EM Hoy, Roger PHILLIPS, Sophie MAURICE, Robynne CROFT**
Duration of hearing:	**21 November 2011 until 31 August 2013**
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CASE 002/01 JUDGEMENT

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1. INTRODUCTION

1. The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia ("Chamber" and "ECCC", respectively), seised of Case File 002/19-09-2007/ECCC/TC ("Case 002"), renders its Judgement against NUON Chea and KHIEU Samphan in Case 002/01.

1.1. Brief Procedural Overview of the Case

2. On 18 July 2007, the Co-Prosecutors filed an Introductory Submission pursuant to Internal Rule 53 alleging that NUON Chea, IENG Sary, KHIEU Samphan, IENG Thirith and KAING Guek Eav *alias* Duch committed various crimes within the jurisdiction of the ECCC.[1] On 19 September 2007, the Co-Investigating Judges ordered the severance of the charges under investigation into two case files: Case 001, the scope of which was limited to the allegations against KAING Guek Eav concerning S-21, and Case 002 which incorporates all remaining charges.[2] On 26 July 2010, KAING Guek Eav was convicted of crimes against humanity and grave breaches of the Geneva Conventions.[3] The Co-Investigating Judges dismissed the charges against KAING Guek Eav in Case 002 on 14 September 2010.[4]

3. Between 19 September and 19 November 2007, NUON Chea, IENG Sary, KHIEU Samphan and IENG Thirith were arrested by order of the Co-Investigating Judges, transferred to the ECCC detention facility and notified of the charges against them.[5] On 15 September 2010, following a three-year judicial investigation during

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[1] Introductory Submission, D3, 18 July 2007. The Co-Prosecutors have sole jurisdiction to initiate prosecution of crimes under ECCC jurisdiction by issuing an Introductory Submission (Internal Rules 49(1) and 53). This initiates a judicial investigation conducted by the Co-Investigating Judges (Internal Rule 53(1)). Once this judicial process has started, a judicial investigation is compulsory for crimes within the jurisdiction of the ECCC (Internal Rule 55(1)). The Co-Prosecutors cannot reduce or withdraw all or part of the charges which must be determined by judicial decision.

[2] Separation Order (OCIJ), D18, 19 September 2007.

[3] Case 001, Judgement, 26 July 2010 ("*KAING Guek Eav* Trial Judgement"); *See also*, Case 001, Appeal Judgement (SCC), 3 February 2012 ("*KAING Guek Eav* Appeal Judgement").

[4] Dismissal Order (OCIJ), D420, 14 September 2010.

[5] Written Record of Arrest of NUON Chea (OCIJ), C7, 19 September 2007; Provisional Detention Order of NUON Chea (OCIJ), C9, 19 September 2007; Detention Order of IENG Sary (OCIJ), C23, 14 November 2007; Police Custody Decision (OCIJ), C14, 12 November 2007; Written Record of Arrest of KHIEU Samphan (OCIJ), C24/I, 19 November 2007; Provisional Detention Order (OCIJ), C26, 19 November 2007; Police Custody Decision (OCIJ), C15, 12 November 2007; Written Record of Arrest (OCIJ), C13/I, 12 November 2007; Arrest Warrant (OCIJ), C13, 8 November 2007.

which 3,866 persons were admitted as Civil Parties, the Co-Investigating Judges charged the Accused for crimes against humanity, genocide, grave breaches of the Geneva Conventions and violations of the 1956 Penal Code.[6] On appeal, the Pre-Trial Chamber confirmed the extensive Closing Order, with some amendments, formally remitting the four Accused to trial on 13 January 2011.[7]

4. Following resolution of applications for release on bail and having received requests by the parties to hear a cumulative total of 1,054 witnesses and to tender approximately 7,600 documents, the Trial Chamber held a Trial Management Meeting on 5 April 2011 with a view to expeditiously commencing trial proceedings. An initial hearing took place between 27 and 30 June 2011 in order to provide early indications to the parties of priority witnesses, experts and Civil Parties for the earliest phases of Case 002.[8] The Chamber also heard submissions on numerous preliminary objections to jurisdiction. Those considered as constituting a barrier to the commencement of trial were decided over the months that followed.[9] In particular, having decided that it was not validly seised with the offences in the 1956 Penal Code in the dispositive part of the Closing Order in Case 002, and that trial in relation to these domestic crimes cannot proceed, the Trial Chamber granted IENG Sary's motion to strike out that part

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[6] Closing Order (OCIJ), D427, 15 September 2010 ("Closing Order"), para. 1613.

[7] Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011, p. 6; Decision on KHIEU Samphan's Appeal against the Closing Order (PTC), D427/4/14, 13 January 2011, p. 4; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/26, 13 January 2011, pp. 4-5. The Pre-Trial Chamber amended the Closing Order to require a nexus between crimes against humanity and an armed conflict and affirmed that rape may be categorised as another inhumane act. The Trial Chamber later rejected the nexus requirement (Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity, E95/8, 26 October 2011, para. 33).

[8] Direction to the Parties (In Advance of Discussion at Initial Hearing of Provisional List of Witnesses, Experts and Civil Parties) (TC), E108, 29 June 2011.

[9] Decision on NUON Chea's Preliminary Objection alleging the Unconstitutional Character of the ECCC Internal Rules, E51/14, 8 August 2011; Decision on NUON Chea motions regarding fairness of judicial investigations (E51/3, E82, E88 and E92), E116, 9 September 2011; Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011; Decision on IENG Sary's Rule 89 Preliminary Objection (*ne bis in idem* and Amnesty and Pardon), E51/15, 3 November 2011. Other submissions, while described as preliminary objections by the parties, were instead considered by the Chamber as more appropriate for resolution in the judgement or deferred to future trials in Case 002 insofar as they concerned matters beyond the scope of Case 002/01 (Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011).

of the Closing Order insofar as it pertains to the trial of domestic crimes before the ECCC.[10]

5. On 22 September 2011, in order to safeguard its ability to reach a timely judgement in Case 002 given the length and complexity of the Closing Order as well as the physical frailty and advanced age of all Accused, the Chamber issued a severance order pursuant to Internal Rule 89*ter*. This severance order limited the scope of the first trial in Case 002 to factual allegations described in the Closing Order as movement of population (phases one and two) and crimes against humanity committed in their course.[11] The Chamber subsequently expanded the scope of Case 002/01 to include the executions of former Khmer Republic officials at Tuol Po Chrey.[12]

6. In February 2011, NUON Chea and IENG Thirith requested that experts be appointed to assess their fitness to stand trial.[13] The Chamber appointed medical experts for this purpose in April 2011.[14] On 17 November 2011, the Chamber found IENG Thirith unfit to stand trial due to the impact of a progressive, dementing illness (most likely Alzheimer's disease) and ordered the severance of the charges against her from Case 002, a stay of the proceedings against her and her release.[15] The Chamber

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[10] Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), E122, 22 September 2011.

[11] Severance Order Pursuant to Internal Rule 89*ter*, E124, 22 September 2011; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

[12] Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of the Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs (TC), E163/5, 8 October 2012.

[13] Urgent Application for Appointment of Fitness Expert, E30, 2 February 2011; Defence Request for Appointment of a Neuropsychiatrist to Assess Madame IENG Thirith's Fitness to Stand Trial, E52, 21 February 2011; *See also*, IENG Sary's Motion to Conduct the Trial through Half-Day Sessions, E20, 19 January 2011.

[14] Order Assigning Expert, E62/3, 4 April 2011.

[15] Decision on IENG Thirith's Fitness to Stand Trial, E138, 17 November 2011.Following an appeal by the Co-Prosecutors, the Supreme Court Chamber ordered further medical treatment of (Decision on Immediate Appeal against Trial Chamber's Order to Release IENG Thirith (SCC), E138/1/7, 13 December 2011). The Trial Chamber, following consultation with medical experts, oversaw further medical treatment of during the first half of 2012 and re-called the Court-appointed experts to assess the Accused's fitness to stand trial in August 2012. On the basis of the experts' conclusions, the Trial Chamber on 13 September 2012 affirmed its finding that IENG Thirith was unfit to stand trial, again ordering her release (Decision on Reassessment of Accused IENG Thirith's Fitness to Stand Trial following Supreme Court Chamber Decision of 13 December 2011, E138/1/10, 13 September 2012). Following a further appeal by the Co-Prosecutors, the Supreme Court Chamber ordered the Trial

found NUON Chea fit to stand trial on 15 November 2011[16] and reaffirmed his fitness on 29 March 2013.[17] IENG Sary and KHIEU Samphan did not contest initial expert reports concluding that they were fit to stand trial.[18] Following periods of hospitalisation and remote participation, however, the Chamber again appointed experts to evaluate IENG Sary's fitness in August and November 2012.[19] Based on the resulting expert reports, the Chamber found IENG Sary fit to stand trial on 26 November 2012.[20] IENG Sary's death on 14 March 2013 extinguished all criminal and civil actions against him.[21]

7. Opening statements in Case 002/01 commenced on 21 November 2011. On 8 February 2013, following the Co-Prosecutors' appeal against the Trial Chamber's refusal to expand the scope of the trial to include S-21 and District 12, the Supreme Court Chamber annulled the Trial Chamber's severance order and all related decisions.[22] Accordingly, the Trial Chamber invited further submissions from the parties on the envisaged scope of trial in Case 002/01.[23] On 29 March 2013, the Chamber again severed the proceedings in Case 002, limiting the scope of Case 002/01 to crimes against humanity committed during the course of movement of

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Chamber to implement a series of post-release conditions on IENG Thirith (Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release IENG Thirith (SCC), E138/1/10/1/5/7, 14 December 2012). Following clarification from the Supreme Court Chamber concerning these conditions, the Trial Chamber implemented them on 27 June 2013 (IENG Thirith Defence Request for Clarification of the Execution of the Supreme Court Chamber's Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (E138/1/10/1/5/8), E138/1/10/1/5/8/3 (TC), 27 June 2013; Order on Measures to be Imposed on IENG Thirith, E138/1/10/1/5/8/4 (TC), 19 July 2013).

[16] Decision on NUON Chea's Fitness to Stand Trial and Defence Motion for Additional Medical Expertise, E115/3, 15 November 2011.

[17] T. 29 March 2013, p. 2; Second Decision on Accused NUON Chea's Fitness to Stand Trial, E256/5, 2 April 2013.

[18] Scheduling Order for Preliminary Hearing to Stand Trial (TC), E110, 11 August 2011.

[19] Medical Examination of Accused IENG Sary, E222, 24 August 2012; Medical Report on Mr. IENG Sary, E222/1, 10 September 2012; Re-appointment of Professor A. John CAMPBELL (IENG Sary) (TC), E238, 8 October 2012.

[20] Decision on Accused IENG Sary's Fitness to Stand Trial, E238/9, 26 November 2012.

[21] Termination of the Proceedings against the Accused IENG Sary, E270/1, 14 March 2013. In the interests of justice, the Chamber still took into account relevant submissions made by the IENG Sary Defence prior to his death that remained pertinent to issues in Case 002/01 (*see e.g.* Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 53; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013, fn. 2).

[22] Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01 (SCC), E163/5/1/13, 8 February 2013.

[23] Memorandum on Directions to the parties in consequences of the Supreme Court Chamber's Decision on Co-Prosecutor's Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01 (TC), E163/5/1/13/1, 12 February 2013.

population (phases one and two), and the executions of Khmer Republic officials at Tuol Po Chrey.[24] The Trial Chamber again identified the specific paragraphs of the Closing Order relevant to Case 002/01.[25] Trial proceedings in Case 002/01 resumed on 8 April 2013.

8. The hearing of evidence in Case 002/01 concluded on 23 July 2013 after 214 hearing days. The parties submitted Closing Briefs on 26 and 27 September 2013. They made Closing Statements between 16 and 31 October 2013.

1.2. Summary of the Charges against the Accused

9. The Closing Order alleges that, between 17 April 1975 and 6 January 1979, NUON Chea, *alias* "Brother Number Two", served as Deputy Secretary of the Communist Party of Kampuchea ("CPK") Central and Standing Committees and at times also filled various other roles within the government of Democratic Kampuchea, including Minister of Propaganda and Information, Acting Prime Minister, Chairman of the People's Representative Assembly ("PRA") and Chairman of the Standing Committee of the PRA.[26]

10. The Closing Order alleges that, between 17 April 1975 and 6 January 1979, KHIEU Samphan**,** *alias* "Haem", "Hem", "Khang" and "Nan", had various positions and roles in the CPK and Democratic Kampuchea including President of the State Presidium, Chairman of Political Office 870 and member of the CPK Central Committee.[27]

11. The Closing Order alleges that, while serving in these various capacities, the Accused committed (*via* a joint criminal enterprise) the crimes against humanity of

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[24] T. 29 March 2013, pp. 2-4; *See also,* Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013. On 23 July 2013, the Supreme Court Chamber dismissed appeals by the Co-Prosecutors and NUON Chea against the Trial Chamber's decision to again sever the proceedings and limit the scope of Case 002/01 (Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002, Summary of Reasons, E284/4/7, 23 July 2013; *See also,* Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002, E284/4/8, 25 November 2013).

[25] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

[26] Closing Order, paras 869-894.

[27] Closing Order, paras 1131-1150.

murder, political persecution and other inhumane acts comprising forced transfer and attacks against human dignity during movement of population (phase one); political persecution and other inhumane acts comprising forced transfer and attacks against human dignity during movement of population (phase two); and murder and extermination of Khmer Republic Officials at Tuol Po Chrey.[28] The Closing Order further alleges that the Accused planned, instigated, ordered, aided, abetted and/or were responsible as superiors for the following crimes against humanity falling within the scope of Case 002/01: murder; extermination; persecution on political grounds; and other inhumane acts comprising attacks against human dignity, forced transfer and enforced disappearances.[29]

[28] Closing Order, para. 1525(i), 1525(iv); Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3; *See also*,Section 14: Joint Criminal Enterprise, paras 780-781, 812-813; In this judgement, the Chamber refers to both "Khmer Republic Soldiers and Officials" and at other times to "Khmer Republic Officials." The latter term is inclusive of Khmer Republic Soldiers.

[29] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

2. PRELIMINARY ISSUES

2.1. Jurisdiction

12. Following the signing of the Agreement between the United Nations and the Royal Government of Cambodia on 6 June 2003, the Cambodian parliament adopted the "Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea" which was promulgated in its final version on 22 October 2004.[30] According to Article 2(1) of the Agreement and Articles 1 and 2 (new) of the ECCC Law, the ECCC has personal jurisdiction over "senior leaders" of Democratic Kampuchea and those who were "most responsible" for the crimes and serious violations of Cambodian penal law, international humanitarian law and international conventions recognised by Cambodia, committed between 17 April 1975 and 6 January 1979.[31]

13. The Co-Investigating Judges ruled that they had personal jurisdiction over NUON Chea and KHIEU Samphan, finding that they were senior leaders of Democratic Kampuchea and/or those most responsible for crimes committed between 17 April 1975 and 6 January 1979.[32] These findings were not challenged before the Pre-Trial Chamber.

14. KHIEU Samphan nevertheless maintains that the ECCC has no personal jurisdiction over him. He contends that during the Democratic Kampuchea regime he was never a political decision maker, nor did he have effective or operational power

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[30] Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law Of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003 ("ECCC Agreement"), Articles 1, 2; Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 10 August 2001 with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) ("ECCC Law"), Article 2.

[31] The Supreme Court Chamber has held that the qualification of an Accused as a senior leader or a person most responsible is primarily a matter of prosecutorial and investigative policy within the sole discretion of the Co-Prosecutors and Co-Investigating Judges. As such, it is not justiciable before the Trial Chamber unless an abuse of discretion is alleged. Whether or not an Accused is a Khmer Rouge official, however, is a jurisdictional requirement justiciable before the Trial Chamber (*KAING Guek Eav* Appeal Judgement, paras 79-80).

[32] Closing Order, paras 1327-1328.

even when he became nominal head of state as President of the State Presidium.[33] The power and control the Accused had as a member of the CPK Central Committee or as head of state are matters of fact relevant to a determination of his criminal responsibility and therefore cannot constitute a barrier to jurisdiction at the trial stage. Additionally, according to the overwhelming weight of the evidence and by their own admission, the Chamber finds that the Accused were Khmer Rouge officials between 1975 and 1979.[34] The Chamber therefore affirms that it has personal jurisdiction over NUON Chea and KHIEU Samphan.

15. The crimes against humanity with which the Accused are charged in Case 002/01, allegedly committed between 17 April 1975 and 6 January 1979, fall within the subject-matter and temporal jurisdiction of the ECCC as defined in Articles 1 and 9 of the Agreement and Articles 1 and 5 of the ECCC Law.

2.2. The Principle of Legality

16. Both the Cambodian and international principles of legality, connected with the general principles of *nulla poena sine lege* (no penalty without law) and *nullum crimen sine lege* (no crime without law), require that the law concerning crimes and modes of criminal liability be clear, ascertainable and non-retrospective.[35] Thus, in the specific context of the ECCC, the principle of legality requires that the offences and modes of responsibility charged must be recognised under Cambodian or international law as it existed between 17 April 1975 and 6 January 1979, and sufficiently

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[33] Preliminary Objections Concerning Jurisdiction, E46, 14 February 2011, paras 11-15; *See also*, Directions to Parties concerning Preliminary Objections and Related Issues (TC), E51/7, 5 April 2011, p. 3 (considering that resolution of KHIEU Samphan's objections concerning personal jurisdiction entail a mixed assessment of law and fact, the Chamber deferred consideration of these submissions until after the hearing of evidence).

[34] *See* Section 7: Roles and Functions – Nuon Chea, paras 347-348; Section 8: Roles and Functions – Khieu Samphan, paras 408-409.

[35] *KAING Guek Eav* Appeal Judgement, para. 91; Cambodian Criminal Code, Articles 1 ("The criminal law defines the offenses, determines those who may be found guilty of committing them, sets penalties, and determines how they shall be enforced"), 3 ("Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred. A penalty may be imposed only if it was legally applicable at the time the offence was committed"), 5 ("In criminal matters, the law shall be strictly construed. A judge may neither expand its scope of application nor interpret it by analogy"), 8 ("The provisions of this Code may not have the effect of denying justice to the victims of serious offences which, under special legislation, are characterised as violations of international humanitarian law, international custom, or international conventions recognised by the Kingdom of Cambodia").

foreseeable and accessible to the Accused.[36] This principle does not prohibit a Chamber from interpreting and clarifying the law or from relying on those decisions that do so in other cases, even where those cases post-date the period under review. It does, however, prevent a Chamber "from creating new law or from interpreting existing law beyond the reasonable limits of acceptable clarification."[37]

17. KHIEU Samphan and NUON Chea submit that the ECCC does not have jurisdiction to try international crimes because the ECCC is not an international tribunal where international law is directly applicable and crimes against humanity did not constitute criminal offences under national law at the time they were allegedly committed. They also claim that, in any case, international customary law did not, at the time of the offence, provide a detailed definition of the crimes and the applicable punishment as required by the principle of legality.[38] The Chamber finds no merit in these submissions.

18. As a matter of principle, an accused is not relieved of criminal responsibility under international law merely because an international crime is not proscribed by national law.[39] Where national law does not provide the specific characteristics of an international crime, a court may rely on international law without violating the principle of legality.[40] It is clear that, in accordance with the Agreement, the Cambodian lawmakers intended to grant the ECCC jurisdiction over crimes against humanity as defined in international law and that such definition was considered

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[36] *KAING Guek Eav* Trial Judgement, paras 26-34; *KAING Guek Eav* Appeal Judgement, paras 89-97; Cambodian Criminal Code, Article 3.

[37] *KAING Guek Eav* Appeal Judgement, para. 95 *citing Aleksovski* Appeal Judgement, paras 126-127.

[38] Consolidated Preliminary Objections, E51/3, 25 February 2011, paras 43-48, 53; Preliminary Objections Concerning Jurisdiction, E46, 14 February 2011, paras 4-5, 19, 24; *See also,* Summary of IENG Sary's Rule 89 Preliminary Objections & Notice of Intent of Noncompliance with Future Informal Memoranda Issued in Lieu of Reasoned Judicial Decisions subject to Appellate Review", E51/4, 25 February 2011, para. 24(e) *referring to*IENG Sary's Appeal against the Closing Order, D427/1/6, 25 October 2010, paras 106, 108, 125.

[39] Nuremberg Principles, Principle II ("The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law"); *Justice* Judgement, p. 975 ("to apply the *ex post facto* principle to judicial decisions of common international law would have been to strangle that law at birth").

[40] *Kononov v. Latvia*, ECtHR (Application No. 36376/04), Judgement, 17 May 2010, para. 208; *See also, KAING Guek Eav* Appeal Judgement, fn. 188.

directly applicable before the Chamber.[41] The Constitutional Council has deemed the ECCC Law to be valid, including its provisions granting the ECCC jurisdiction over international law.[42]

19. The Chamber notes that Article 9 of the Agreement defines crimes against humanity by reference to the Rome Statute, while Article 5 of the ECCC Law does not make such reference in its definition of the crimes. The Supreme Court Chamber has already ruled that the jurisdiction of the ECCC over crimes against humanity is limited by the definition of the crimes as it stood under international law at the time of the alleged criminal conduct.[43] Therefore, neither Article 5 of the ECCC Law, nor Article 9 of the Agreement, can be interpreted as a retroactive amendment to that definition.[44] The Chamber therefore affirms that it has jurisdiction over those international crimes identified in the ECCC Law which satisfy the principle of legality.

20. Insofar as the Trial and Supreme Court Chambers did not previously evaluate whether the crimes and modes of responsibility at issue in Case 002/01 were recognised in domestic or international law by 1975, the Chamber does so in this judgement.[45] The Chamber also considers whether the relevant crimes and modes of responsibility were sufficiently foreseeable and accessible to the Accused.[46]

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[41] When adopting the new Criminal Code, which incorporates definitions of genocide, crimes against humanity and war crimes into national law, the Cambodian lawmakers further expressly stated in Article 8 that the "provisions of this Code may not have the effect of denying justice to the victims of serious offenses which, under special legislation, are characterised as violations of international humanitarian law, international custom, or international conventions recognised by the Kingdom of Cambodia".

[42] Constitutional Council Decision on EC Law, E9/7.2, Decision No. 040/002/2001, Case No. 038/001/2001, 12 February 2001, pp. 1-2 (original text in Khmer. Unofficial translation in English). Similarly, the Pre-Trial Chamber held that the Royal Government of Cambodia included an exception for international crimes in their formulation of the principle of legality in national law (Decision on Appeals by NUON Chea and IENG Thirith Against the Closing Order, D427/3/15, 15 February 2011, paras 96-97).

[43] *KAING Guek Eav* Appeal Judgement, paras 99-100.

[44] *KAING Guek Eav* Appeal Judgement, paras 99-100.

[45] *See* Section 9: Applicable Law: Crimes Against Humanity, paras 411, 415, 426, 435-436.

[46] *See* Section 13: Individual Criminal Responsibility, paras 689, 691, 697, 699, 701, 703, 714. The Pre-Trial, Trial and Supreme Court Chambers, in determining whether a crime or mode of responsibility was sufficiently foreseeable and accessible to , took into account whether a crime constituted customary international law, whether a crime was codified in conventional law, the grave nature of the crimes, a record of charges and convictions for the charged crimes at international tribunals and other courts prosecuting international crimes, whether a crime was also criminalised in domestic law and the position of the accused in the (Decision on IENG Sary's Appeal Against the

2.3. Evidentiary and Procedural Principles

2.3.1. *Introduction*

21. The 2007 Cambodian Code of Criminal Procedure governs proceedings before the ECCC. Guidance may also be drawn from international law in situations where existing procedures do not deal with a particular matter, there is uncertainty regarding their interpretation or application, or where they may be inconsistent with international standards.[47] The Internal Rules consolidate the Cambodian procedures applicable before the ECCC and adopt international procedure in order to ensure justice, fairness and due process of law.[48] Within this framework, the Chamber must "ensure that trials are fair and expeditious [...] with full respect for the rights of the accused and for the protection of victims and witnesses".[49]

2.3.2. *Burden and Standard of Proof*

22. The Accused are presumed innocent until proven guilty.[50] The Co-Prosecutors bear the burden of proof.[51] In order to convict, the Chamber must be convinced of an accused's guilt "beyond reasonable doubt".[52] In order to resolve any discrepancy between the different language versions of Internal Rule 87(1) that reflect the common law "beyond reasonable doubt" standard and the civil law concept of "*intime conviction*", the Chamber has adopted a common approach that evaluates the sufficiency of the evidence. Upon a reasoned assessment of the evidence, the Chamber interprets any doubt as to guilt in the Accused's favour.[53]

Closing Order (PTC), D427/1/30, 11 April 2011, paras 253, 257, 263, 331-332, 355, 460; *KAING Guek Eav* Appeal Judgement, paras 96, 160-162, 211-212, 280; *KAING Guek Eav* Judgement, paras 31-32).

[47] ECCC Law, Articles 20 new, 23 new, 33 new; ECCC Agreement, Article 12(1); Internal Rule 2.

[48] ECCC Agreement, Article 12(2); Internal Rules, Preamble; *KAING Guek Eav* Judgement, para. 35.

[49] ECCC Law, Article 33 new. An accused is guaranteed certain fundamental rights during the trial phase of proceedings (*see* ECCC Agreement, Article 13(1) (referring to ICCPR, Articles 14 and 15); ECCC Law, Articles 34 new, 35 new).

[50] Internal Rule 21(1)(d).

[51] Internal Rule 87(1).

[52] Internal Rule 87(1).

[53] The English and Khmer versions of Internal Rule 87(1) provide a "beyond reasonable doubt" standard, while "*intime conviction*" is provided in the French version (*KAING Guek Eav* Judgement, para. 45).

2.3.3. ***The Case File***

23. The Trial Chamber was seised with the Case File following resolution of all appeals against the Closing Order on 13 January 2011.[54] Material on the Case File, but not ultimately put before the Chamber pursuant to Internal Rule 87, is not relied upon by the Chamber in considering the Accused's guilt.[55] Once notified of the charges, a Charged Person and after an indictment, an Accused, has on-going access to the Case File throughout the proceedings.[56] Thus NUON Chea has had access to the Case File since 19 September 2007 and KHIEU Samphan since 19 November 2007.[57]

2.3.4. ***Admissibility of Evidence***

2.3.4.1. *Legal Framework*

24. Unless provided otherwise, all evidence is admissible[58] and, subject to the criteria set out in Internal Rules 87(3)-(4), the parties may propose the admission of any evidence at any stage of the trial.[59] The Chamber has broad discretion in determining the witnesses to be heard and the evidence to be admitted.[60]

25. All evidence must be summarised, read out or otherwise appropriately identified.[61] Prior to the commencement of the trial, the Chamber may order all

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[54] Order to File Material in Preparation for Trial (TC), E9, 17 January 2011, p.1; *See also,* Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011, p. 6; Decision on KHIEU Samphan's Appeal against the Closing Order (PTC), D427/4/14, 13 January 2011, p. 4; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/26, 13 January 2011, pp. 4-5.

[55] *KAING Guek Eav* Trial Judgement, para. 38.

[56] Internal Rules 9(5)-(6), 10(4), 55(6), 55(11), 86; *See also,* Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred during the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, para. 18.

[57] Written Record of Initial Appearance of NUON Chea (OCIJ), D20, 19 September 2007; Written Record Initial Appearance of KHIEU Samphan (OCIJ), D42, 19 November 2007.

[58] Internal Rule 87(1).

[59] Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para.21; NUON Chea Defence Notice to the Trial Chamber Regarding Research at DC-Cam (E211) (TC), E211/2, 13 August 2012, para. 4; Case 001, Decision on Parties Requests to Put Certain Materials before the Chamber pursuant to Internal Rule 87(2), E176, 28 October 2009, para. 13.

[60] Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para. 20; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 18-20; Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, para. 25.

[61] Internal Rule 87(3).

parties to file initial lists identifying, briefly describing and indicating the relevance of all proposed evidence.[62] All proposed evidence not available at the time the Chamber is seised with the case is considered "new" evidence subject to the requirements of Internal Rule 87(4). Parties must demonstrate that new evidence was not available prior to the opening of the trial and/or could not have been discovered earlier with the exercise of reasonable diligence.[63] Before placing new material on the Case File, the Chamber must determine if it is conducive to ascertaining the truth.[64]

26. The Chamber may reject any material that is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under the law or intended to prolong proceedings.[65] Thus evidence put before the Chamber must be *prima facie* relevant and reliable. The parties must have the opportunity to subject evidence to adversarial debate and to object to the admission of evidence, even if they do not avail themselves of this opportunity.[66]

2.3.4.2. *Sources of Evidence Put Before the Chamber*

2.3.4.2.1. *Evidence of the Accused*

27. Following opening statements, the substantive hearing commenced with statements by and questioning of the Accused in the order named in the Closing Order.[67] Pursuant to Internal Rules 21(1)(d) and 90(1), the President informed each Accused, prior to his opening statement, of his fundamental right to remain silent.[68] In addition to those statements foreseen in the Internal Rules, when the Accused were

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[62] Internal Rules 80(1)-(3).

[63] Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, paras 17, 23, 28, 38.

[64] Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para. 27, fn. 38. This standard is based on that applied at the investigation phase for investigative acts which result in the placement of material on the case file (Internal Rule 55(5)).

[65] Internal Rules 87(3).

[66] *See e.g.* Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 40-43.

[67] Trial Chamber Response to Co-Prosecutors' Requests concerning Testimony of the Accused (E101 and E101/1) (TC), E101/5, 27 October 2011, p. 1; Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011, p. 3.

[68] T. 5 December 2011, pp. 39-40 (NUON Chea); T. 13 December 2011, pp. 58-59 (IENG Sary); T. 13 December 2011, p. 66 (KHIEU Samphan).The Accused were exempt from taking an oath (Internal Rule 90).

willing to respond, the Chamber put all questions it considered pertinent, whether or not they would tend to prove or disprove the guilt of the Accused. The parties were also provided an opportunity for questioning the Accused.[69] The Accuseds' statements constitute evidence before the Chamber.[70]

28. KHIEU Samphan made an opening statement and gave evidence on 13 December 2011 and 12 January 2012, but thereafter declined to answer questions, indicating that he first wanted to hear the evidence against him.[71] In May 2013, KHIEU Samphan responded to questions posed by some Civil Parties.[72] On 9 July 2013, KHIEU Samphan again invoked his right to remain silent.[73] On 31 October 2013, KHIEU Samphan made a final statement.[74]

29. Between December 2011 and April 2012, NUON Chea made various statements and responded to questions from the Chamber and parties.[75] On 18 April 2012, NUON Chea invoked his right to remain silent.[76] NUON Chea made additional statements and responded to questioning on various occasions between June 2012 and July 2013.[77] NUON Chea again invoked his right to remain silent on 17 July 2013.[78] NUON Chea made a final statement on 31 October 2013.[79]

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[69] Internal Rule 90(1); Trial Chamber Response to Co-Prosecutors' Requests concerning Testimony of the Accused (E101 and E101/1) (TC), E101/5, 27 October 2011, p. 1; Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011, p. 3.

[70] T. 18 April 2012, p. 40; *See also*, Internal Rule 87(5).

[71] T. 13 December 2011, pp. 62-96; T. 12 January 2012, pp. 51-83; *See also*, T. 16 January 2012, pp. 77-79.

[72] T. 29 May 2013, pp. 18-24, 28, 54-55, 85-88; T. 30 May 2013, pp. 16-18, 80-83; T. 4 June 2013, pp. 24-25, 68-70, 109-110.

[73] T. 9 July 2013, pp. 41-43.

[74] T. 31 October 2013, pp. 68-73.

[75] T. 5 December 2011; T. 6 December 2011, pp. 4-31; T. 13 December 2011, pp. 2-55; T. 14 December 2011, pp. 2-55; T. 15 December 2011, pp. 29-102; T. 10 January 2012, pp. 10-72; T. 11 January 2012, pp. 9-53; T. 12 January 2012, pp. 8-51; T. 30 January 2012, pp. 1-31; T. 31 January 2012, pp. 1-55; T. 8 February 2012, pp. 8-53; T. 9 February 2012, pp. 39-50; T. 16 February 2012, pp. 4-10; T. 20 March 2012, pp. 52-53; T. 19 March 2012, p. 23; T. 18 April 2012, pp. 3-4.

[76] T. 18 April 2012, pp. 4-7.

[77] T. 20 June 2012, pp. 71-73; T. 10 October 2012, pp. 6-7; T. 6 June 2013, pp. 37-41; T. 9 July 2013, pp. 16-27; T. 29 May 2013, pp. 26-27, 28, 55-56; T. 30 May 2013, pp. 18-20, 83-85; T. 4 June 2013, p. 26, 70-71.

[78] T. 17 July 2013, pp. 16-17.

[79] T. 31 October 2013, pp. 1-34.

2.3.4.2.2. *Evidence of Civil Parties, Witnesses and Experts*

30. By virtue of their special status, Civil Parties were not required to take an oath.[80] Witnesses were informed of their right not to self-incriminate and, upon request, were assisted by counsel.[81] Expert opinion was also heard by the Chamber on specific technical issues, to assist it in understanding evidence presented during trial.[82]

31. The Chamber admitted written witness, expert and Civil Party statements and transcripts from prior proceedings in conjunction with or in place of oral evidence. Prior statements of witnesses, experts and Civil Parties heard at trial were admitted before the Chamber.[83] Beginning in June 2012, in the interests of expeditiousness, the President began asking witnesses and Civil Parties appearing in court to affirm the accuracy of their prior statements made to the Office of the Co-Investigating Judges, and as reflected in the written records of interview. Upon affirmation, while noting that the parties have the right to test a witness's credibility on areas within or beyond his prior statements, the Chamber invited the parties to ask further questions only where there was a need for clarification relevant to matters that are insufficiently covered by these statements or not dealt with during questioning before the Co-Investigating Judges.[84] Absent the opportunity for examination, the Chamber excluded statements going to proof of the acts and conduct of the Accused as alleged in the Closing Order. Exceptionally, the Chamber admitted statements going to proof of the Accused's acts and conduct as charged where the witness was deceased, thereby preventing the opportunity for confrontation. For example, TCW-699 died before the close of the hearing, preventing the Chamber from hearing him. Instead,

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[80] Internal Rule 23(4); *KAING Guek Eav* Trial Judgement, para. 52; T. 5 April 2011, p. 100; Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011 (TC), E74, 8 April 2011, p. 1.

[81] All witnesses, however, testified under oath unless exempt by virtue of their age or special relationship with an Accused or Civil Party.

[82] Internal Rules 31, 80*bis*(2).

[83] Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 2, 26.

[84] Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 31; Notice to the Parties Regarding Revised Modalities of Questioning and Response to Co-Prosecutor's Request for Clarification Regarding Use of Documents during Witness Testimony (E201) (TC), E201/2, 12 June 2012, para. 1; Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency (TC), E218, 3 August 2012, para. 7 (in the interests of accessibility, the Chamber occasionally summarised these statements in court).

the Chamber admitted his prior statement, noting that it would not base any conviction decisively thereupon and thereby safeguarding the rights of the Accused.[85]

32. Over the course of Case 002/01, 92 individuals appeared before the Chamber concerning the substantive matters at issue including 58 witnesses (of whom, five were character witnesses called on behalf of KHIEU Samphan), three experts and 31 Civil Parties. Five appeared by video-link.[86] The Chamber admitted 1,124 written statements and transcripts of witnesses and Civil Parties who did not appear before the Chamber in place of oral testimony.[87]

2.3.4.2.3. *Documentary Evidence*

33. Following the opportunity for public, adversarial debate, the Chamber admitted 5,824 pieces of documentary evidence, including contemporaneous and analytical documents, audio and video recordings and the written evidence of witnesses, experts and Civil Parties.[88]

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[85] Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 21-22, 32-33; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 29-30.

[86] LONG Norin, Denise AFFONÇO, Sydney SCHANBERG, Phillipe JULLIAN-GAUFRES and CHAU Sockon. Internal Rule 26(1) permits testimony by real-time audio or video link where it is not "seriously prejudicial to, or inconsistent with, defence rights".

[87] Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013.

[88] Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012; Decision on Objections Proposed to be Put before the Chamber in Co-Prosecutors' Annexes A6-A11 and by the Other Parties, E185/1, 3 December 2012; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013. In addition to that evidence admitted in these written decisions, parties were also permitted to tender evidence through an individual appearing live (Notice to the Parties Regarding Revised Modalities of Questioning and Response to Co-Prosecutor's Request for Clarification Regarding Use of Documents during Witness Testimony (E201) (TC), E201/2, 13 June 2012, para. 2).

2.3.5. ***Final Assessment of the Evidence***

2.3.5.1. *Probative Value*

34. The Chamber bases its findings on evidence put before it and subjected to adversarial debate.[89] In conjunction with final submissions, the Chamber considers objections to the probative value of evidence made at trial, particularly those that went beyond the *prima facie* relevance and reliability of proposed evidence.[90] Various factors are relevant to the probative value of evidence including the criteria set out in Internal Rule 87(3),[91] the circumstances surrounding the creation or recording of evidence, whether the original or a copy was admitted, legibility, discrepancies with other versions, deficiencies credibly alleged, whether the parties had the opportunity to challenge the evidence and other *indicia* of reliability including chain of custody and provenance.[92] The Chamber also considers the identification, examination, bias, source and motive – or lack thereof – of the authors and sources of the evidence.[93]

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[89] Internal Rule 87(2). The Chamber notes that the English version of this rule requires that evidence be "subjected to examination" while the French version requires that it be "*débattues contradictoirement*".

[90] Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, paras 21, 30; Decision on Objections Proposed to be Put before the Chamber in Co-Prosecutors' Annexes A6-A11 and by the Other Parties, E185/1, 3 December 2012, paras 13, 19; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, paras 20, 24, 26; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 21, 23, 26, 30, 32.

[91] The Chamber takes into account whether evidence is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under the law or intended to prolong proceedings (Internal Rule 87(3)).

[92] *See e.g.* Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, paras 30, 34 and fn. 49; Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, paras 26, 28, 36; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 17, 25-29.

[93] Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para.24; Decision on Assignment of Experts, E215, 5 July 2012, para. 15; Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 14.

Absent the opportunity to examine the source or author of evidence, less weight may be assigned to that evidence.[94]

35. In order to convict, all reasonable inferences that may be drawn from the evidence must be consistent with the guilt of the accused.[95] Additionally, certain evidence admitted for a limited purpose, such as proof that a statement was obtained through torture, may be relied upon only for that limited purpose and not as to the truth of the statement.[96]

36. The Chamber ordered the parties to ensure that all admitted evidence was available in all three official languages of the ECCC by the filing of Closing Briefs. An exception applied to certain categories of evidence which self-evidently did not require translation.[97] Nevertheless, when the parties filed their Closing Briefs on 26 September 2013, various documents put before the Chamber remained on the Case File in only one or two official languages of the ECCC. In the interests of justice, the Chamber still considers this evidence in reaching its judgement. However, the Chamber only relies on such evidence where it is corroborated by another reliable source. Additionally, the Chamber considers whether the Accused have demonstrated an understanding of the evidence or have relied upon such evidence in their

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[94] *KAING Guek Eav* Judgement, para. 43; *KAING Guek Eav* Appeal Judgement, paras 547, 557; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 21-22, 32-33; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 19, 23, 29-30.

[95] Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 16; *See also, Mugenzi and Mugiraneza* Appeal Judgement, para. 88; *Delalić et al.* Appeal Judgement, para. 458.

[96] T. 5 April 2011, pp. 96-97; Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011 (TC), E74, 8 April 2011, p. 3; Case 001, Decision on Parties Requests to Put Certain Materials before the Chamber pursuant to Internal Rule 87(2), E176, 28 October 2009, para. 8.

[97] Decision on Co-Prosecutors' Request to Establish Procedure Regarding Admission of Documents not Translated in All ECCC Languages (E223/2/6) and Lead Co-Lawyers' Response to Trial Chamber Directives on Tendering Civil Party Statements and Other Documents (E223/2/7 and E223/2/7/1) (TC), E223/2/6/1, 17 June 2013, p. 2 (The Chamber extended the deadline for the filing of evidence in all three languages from 4 March 2013 to the date on which the Closing Briefs in Case 002/01 were filed. The Chamber also determined that S-21 prisoner records were among the types of evidence that did not require translation into all three languages, a category which also included photos, diagrams, drawings and maps).

submissions before the Chamber.[98]

2.3.5.2. *Spelling of Names and Locations*

37. The spelling of certain names and locations on the Case File at times differ due to a number of factors ranging from a source's origins, pronunciation of a name or its subsequent interpretation. The Chamber accepts that names and locations with similar, but not identical, spelling may refer to the same individuals or places. Further, given the Cambodian practice of adopting different names, as well as the prevalence of aliases and revolutionary names within the CPK, the Chamber notes that some individuals had various appellations.[99]

2.3.5.3. *Interpretation, Translation and Transcription Discrepancies*

38. Even with the safeguards and levels of review employed at the ECCC, errors in interpretation, translation and transcription may occur. The Interpretation and Translation Unit (ITU) and various Judges and Chambers took measures throughout the proceedings in an effort to reduce the number of errors and provide for their correction upon identification.[100] Throughout the investigation and trial, the Defence had access to interpreters and translators. All parties had capabilities in all three official languages of the ECCC[101] and therefore were well-positioned to identify

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[98] *See e.g.* Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. vi, ERN (En) 00103721 (KHIEU Samphan noted that he often refers to *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* (E3/88) by William SHAWCROSS and that he learned a "great deal" about events in the 1970s and 1980s from book by David CHANDLER, Ben KIERNAN and Michael VICKERY), pp. 10-11, ERN (En) 00103728 (Referring to excerpts from E3/88), pp. 11-12, ERN (En) 00103728-29 (Referring to excerpts from *Cambodia 1975-1982* (E3/1757) by Michael VICKERY), pp. 20-21, ERN (En) 00103733 (Referring to excerpts from *Brother Number One: A Political Biography of Pol Pot* (E3/2816) by David CHANDLER), p. 73, ERN (En) 00103759 (Citing *Brother Enemy: The War After the War* (E3/2376) by Nayan CHANDA); Book by KHIEU S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/3855, pp. 54-58, ERN (En) 00498275-7 (Referring to and citing *Pol Pot: A History of a Nightmare* (E3/9) by Philip SHORT and *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge* (E3/1593) by Ben KIERNAN); NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, n. 581 (Relying on Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, 1979).

[99] *KAING Guek Eav* Trial Judgement, para. 58.

[100] Memorandum from Chief of Court Management Section to the President of the Trial Chamber, E195/2, 15 August 2012, paras 2-3; Decision on Defence Notification of Errors in Translations (PTC), No. 2, 17 December 2010, para. 10.

[101] Decision on Request by the Defence for KHIEU Samphan for Trilingual Notification of the Supreme Court Chamber's Decisions (SCC), E163/5/1/15, 30 April 2013, para. 4.

errors in translation and transcription and request their correction.[102] Where relevant, the Chamber took these errors into account in assessing probative value.

2.3.5.4. *Classified Information*

39. At the conclusion of closing submissions, 5,102 documents and other materials put before the Chamber pursuant to Internal Rule 87(3) remained 'confidential'. The vast majority of this material retains the classification automatically assigned during the judicial investigation. Reclassification of material generated by, and collected during, the judicial investigation no longer poses a generalised risk of prejudice to the rights of the parties or the integrity of the investigation.[103] Nevertheless, certain justifications for non-disclosure continue to be valid.[104] Thus, in reaching its judgement and publicly relying upon and/or referring to classified information, the Chamber considers whether, beyond the confidentiality of the judicial investigation, any justification for such classification exists.[105] The Chamber, on its own motion, determined that confidentiality is no longer justified for that information publicly disclosed in this judgement.[106]

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[102] *See e.g.* Decision on KHIEU Samphan's Request for Revision of Translations of Evidence on the Case-File concerning "870" (E296), E296/1, 15 August 2013; Decision on KHIEU Samphan's Appeal against Order on Translation Rights and Obligations of the Parties (PTC), A190/I/20, 20 February 2009, paras 46-49; KHIEU Samphan Defence Motion E195 and Envisaged Future Procedures for Correction of Transcripts (TC), E195/1, 24 July 2012; Memorandum from Chief of Court Management Section to the President of the Trial Chamber, E195/2, 15 August 2012, para. 4; Review of Translation of Written Records of Witness Interview in Case File 002 (ITU), No. 3, 26 January 2011, p. 3; Decision on Defence Notification of Errors in Translations (PTC), No. 2, 17 December 2010, para. 11.

[103] Case 001, Decision on Guidelines for Reclassification of Documents on the Case File (SCC), 26 July 2012, para. 6.

[104] Classification and Management of Case-Related Information, Practice Direction, ECCC/004/2009/Rev.1, 7 March 2012, Articles 5-7.

[105] In this regard, the Chamber is mindful of its obligation to deliver its judgement in public including the essential findings, evidence and legal reasoning (Internal Rules 102(1), 79(6)(d); ICCPR, Article 14(1); General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial, Human Rights Committee, CCPR/C/GC/32, 23 August 2007, para. 29).

[106] Insofar as the Chamber reclassified particular portions of a document in this judgement, the Chamber clarifies that this partial disclosure does not affect the classification pertaining to those undisclosed portions of, and information in, a document or other material as a whole.

2.4. Fair Trial Rights

2.4.1. *Introduction*

40. Over the course of the proceedings in Case 002/01, NUON Chea and KHIEU Samphan alleged violations of their rights to a fair and impartial investigation and trial. The Chamber addressed these allegations on a case-by-case basis, providing relief where it was in the interests of justice. Although both Accused had initially signalled their intent to answer the parties' and the Chamber's questions at the conclusion of the hearing of evidence, they ultimately refused to do so, citing as a basis for this refusal the Chamber's alleged violation of their fair trial rights throughout the proceedings.[107] The Accused further developed these submissions in their Closing Briefs and Closing Statements requesting the Chamber to dismiss all or part of the charges, stay the proceedings and/or consider alleged violations of their rights in the final assessment of the evidence.[108]

41. The Chamber addresses these submissions below, taking decisions as required to supplement those already taken during the course of the trial. The Chamber will also examine whether procedural errors, if any, have a cumulative effect on the overall fairness of the trial.[109]

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[107] T. 9 July 2013, pp. 41, 42-43; T. 17 July 2013, pp. 67-68; Withdrawal of Notice of Intent pursuant to Internal Rule 90, E287/2, 30 July 2013, paras 3-4, 18.

[108] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, paras 16-115; T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 2, 5-8, 21-25, 28-44, 51-52, 55-60; T. 31 October 2013 (NUON Chea), pp. 3, 29-31; T. 31 October 2013 (NUON Chea Defence Rebuttal), pp. 35-38, 41-44; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 4-8, 94-101, 109; T. 25 October 2013 (KHIEU Samphan Defence Closing Statements), pp. 2-23, 26-27, 32-40, 54; T. 31 October 2013 (KHIEU Samphan Defence Rebuttal), pp. 63-65. Allegations concerning the fairness of the proceedings also formed the basis of an interlocutory appeal by the KHIEU Samphan Defence (Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013). The Supreme Court Chamber considered that KHIEU Samphan failed to demonstrate that appellate intervention was warranted at the time the appeal was lodged, considered that the Defence could still raise the matter before the Trial or Supreme Court Chambers on appeal from the trial judgement, and declared the appeal inadmissible (Decision on Request by Defence for KHIEU Samphan for Immediate Stay of Proceedings, E275/2/1/4, 18 October 2013, paras 7-8).

[109] Even if no individual error results in prejudice to the Accused, the Chamber must still assess the overall effect of harmless error to determine whether the Accused received a fair trial (*Ntagerura et al.*, Appeal Judgement, para. 114).

2.4.2. *Alleged Defects in the Judicial Investigation*

42. Repeating arguments and submissions made previously over the course of the proceedings in Case 002/01, in their Closing Statements, the Accused submit that the judicial investigation was so impaired by procedural defects and tainted by political interference that the Trial Chamber could not rely on it without infringing the right of the Accused to a fair trial.[110] The Chamber has already ruled that, during the pre-trial stage, the Accused had made extensive use of the procedural safeguards existing in the ECCC legal framework to address alleged defects in the investigation either before the Co-Investigating Judges or on appeal to the Pre-Trial Chamber. The Accused have also failed to satisfy the Trial Chamber that alleged procedural defects or allegations of government interference had a tangible impact on Case 002/01.[111] Appeals against these decisions were dismissed by the Supreme Court Chamber.[112]

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[110] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, paras 16-26 (alleging unfairness arising from selective prosecution and the allegation that the ECCC represents the "basest form of victor's justice"), 27-37 (systematic flaws in the conduct of the judicial investigation), 45-46 (failure of the Co-Investigating Judges to summons key witnesses), 51 (failure of the Co-Investigating Judges to explore the historical context of the crimes), 71 (failure of the Co-Investigating Judges to explore the chain of custody and origins of evidence), 73-77 (the investigatory practices during the judicial investigation were flawed), 80-81 (the Co-Investigating Judges were biased and subject to government interference); T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 6-8, 28-37, 45-47, 49-51, 55-60; T. 31 October 2013 (NUON Chea Defence Rebuttal), p. 44; T. 31 October 2013 (KHIEU Samphan Defence Rebuttal), pp. 63-64.

[111] *See e.g.* Decision on IENG Sary's Motion for a Hearing on the Conduct of the Judicial Investigations, E71/1, 8 April 2011 (The Chamber dismissed the Defence motion finding that no specific matter or alleged procedural defect was raised and that no specific relief was requested. The Chamber referred to Internal Rule 76(7) which states "Subject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation. No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber"); Decision on NUON Chea Motions regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), E116, 9 September 2011; Decision on NUON Chea's Request for a Rule 35 Investigation regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, E142/3, 13 March 2012 (discrepancies between audio and written records are a matter which is relevant to the final assessment of evidence); Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012; Decision on Rule 35 Applications for Summary Action, E176/2, 11 May 2012; Decision on Application for Immediate Action Pursuant to Rule 35, E189/3, 22 November 2012. NUON Chea argues that the Chamber's decisions concerning political interference were "systematically weak and evasive" (NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 89). Beyond this general assertion, he fails to either identify those decisions he believes to be deficient or substantiate this argument. The Chamber is therefore unable to assess this submission and summarily dismisses it.

[112] Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of the Investigation (SCC), E116/1/7, 27 April 2012; Decision on NUON Chea's "Immediate Appeal against Trial Chamber Decision on Application for Immediate Action pursuant to Rule 35" (SCC), E189/3/1/8, 25 March 2013; Decision on NUON Chea's Appeal against the Trial Chamber's Decision on Rule 35 Applications for Summary Action (SCC), E176/2/1/4, 14 September 2012.

The Accused allege no new facts or circumstances arising since these decisions were issued and their requests, which amount to requests for reconsideration of these prior decisions, are therefore inadmissible. Nevertheless, where defects in the investigation were alleged with sufficient particularity and have clear relevance to Case 002/01, the Chamber will consider them in its final assessment of the evidence.[113]

2.4.3. *Impartiality of the Trial Chamber*

43. NUON Chea challenges the impartiality of the Trial Chamber, as well as the sufficiency of measures taken to counter alleged improper pressure and interference.[114] These challenges repeat submissions previously made in Case 002/01, which were deemed unsubstantiated and dismissed.[115] In February and August 2012, the Accused alerted the Chamber to public pronouncements of senior government officials concerning the guilt of the Accused and the rights of the defence.[116] Both the Supreme Court and Trial Chambers issued warnings against further improper pronouncements by senior government officials, affirmed the impartiality of the Trial Chamber and emphasised the duty and ability of the Chamber to disregard these statements in considering the alleged guilt of the Accused.[117] NUON Chea alleges no new facts or circumstances arising since these decisions were issued and what amounts to a request for reconsideration of these prior decisions is therefore inadmissible. The Chamber nevertheless re-affirms its impartiality and that it will disregard any irrelevant information not put before it pursuant to Internal Rule 87 in reaching its judgement.

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[113] Decision on NUON Chea Request for a Rule 35 Investigation regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, E142/3, 13 March 2012, paras 6-15.

[114] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 23-26, 58, 80-86; T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 6-8, 28-31, 49-52.

[115] Decision on IENG Sary's Application to Disqualify Judge NIL Nonn and Related Requests, E5/3, 28 January 2011; Decision on IENG Thirith, NUON Chea and IENG Sary's Applications for Disqualification of Judges NIL Nonn, Silvia CARTWRIGHT, YA Sokhan, Jean-Marc LAVERGNE and THOU Mony, E55/4, 23 March 2011.

[116] Application for Summary Action against HUN Sen pursuant to Rule 35, E176, 22 February 2012, paras 17-23; Rule 35 Request Calling for Summary Action against Minister of Foreign Affairs HOR Namhong, E219, 13 August 2012, paras 12-22.

[117] Decision on NUON Chea's Appeal against the Trial Chamber's Decision on Rule 35 Applications for Summary Action (SCC), E176/2/1/4, 14 September 2012; Decision on Rule 35 Applications for Summary Action, E176/2, 11 May 2012.

2.4.4. *Facilities and Time Available for the Preparation of a Defence*

44. The Accused raise a number of issues related to the time and facilities available for preparation of a defence including belated translations into their working languages, equality of arms between the Co-Prosecutors and the Defence, and the period between notification of the charges and deadlines for proposing evidence.[118] Each of these issues has already been addressed by the Chamber and relief has been provided where it was in the interests of justice (for example, the provision of interpreters and adjustment of relevant procedures). Considering in particular the lengthy judicial investigation, the Chamber re-affirms that the Accused had proportional and adequate time and facilities for the preparation of a defence throughout the proceedings.[119] The parties also had procedural equality in presenting their case and the Accused have failed to substantiate any violation of the principle of equality of arms.[120] The Accused allege no new facts or circumstances arising since prior decisions concerning the time and facilities available for preparation of a defence and what amounts to requests for reconsideration of these prior decisions by the Accused are therefore inadmissible.

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[118] Some of these issues were revisited by the Defence at the close of the hearing (NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 63-67, 87-88 (concerning the allegedly *ultra vires* procedure for filing initial lists of evidence); T. 31 October 2013 (NUON Chea), pp. 3, 29-30 (equality of arms); Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013, paras 76, 93-94 (concerning translations of evidence and filings)).

[119] *See e.g.* Order to File Material in Preparation for Trial (TC), E9, 17 January 2011; Notification of the Trial Chamber's Disposition of Request for Extension of Deadlines (E9/6) (TC), E9/6/1, 14 February 2011; Decision on Requests for Extension of Time to File Lists of Documents and Exhibits, E9/16/4, 29 March 2011; Response to IENG Sary Defence Request for Access to Strictly Confidential Documents on the Case File (E118) (TC), E118/4, 28 November 2011; Reclassification of Additional Documents on the Case File, E118/5 (TC), 12 January 2012; Notification of Strictly Confidential Documents related to the Health of the Accused (TC), E118/6, 19 January 2012; Reclassification of Additional Documents on the Case File (TC), E118/7, 30 August 2013; Decision on NUON Chea's Preliminary Objection alleging the Unconstitutional Character of the ECCC Internal Rules, E51/14, 8 August 2011; Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012; Decision on KHIEU Samphan Request for Declaration of Inadmissibility of the Co-Prosecutors' Closing Brief (E295/7), E295/7/2, 14 October 2013, para. 6.

[120] Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, para. 21 ("the role the Co-Prosecutors played in the Preliminary Investigation and other case does not impact the equality of arms so long as all parties have procedural equality in *presenting* their case").

2.4.5. *Notice of the Charges and the Conduct of the Trial in Case 002/01*

45. The Accused argue that the severance of the Closing Order was unmanageable and that uncertainty regarding the contours of Case 002/01, division of the trial into topical segments, uncertainty concerning the admissibility of evidence outside the scope of Case 002/01, and uncertainty concerning future trials impaired their ability to present an effective defence.[121]

46. On 5 April 2011, the Chamber notified the parties that it would commence the trial by hearing evidence relating to the structure of Democratic Kampuchea, the roles of each Accused during the period prior to the establishment of Democratic Kampuchea, the roles of each Accused in the Democratic Kampuchea government, and the policies of Democratic Kampuchea.[122] Subsequently, on 3 June 2011, the Chamber indicated that evidence of facts falling outside the scope of Case 002/01 was admissible if demonstrably relevant.[123] Throughout the proceedings, the Chamber admitted evidence of facts outside the scope of Case 002/01 where it was demonstrably relevant to proof of, *inter alia*, the Democratic Kampuchea policies alleged in the Closing Order, the contextual elements of crimes against humanity or the impact of crimes on victims.[124]

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[121] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 93-101; T. 31 October 2013 (NUON Chea Defence Rebuttal), pp. 35-38; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 4-8, 94-101, 109; T. 25 October 2013 (KHIEU Samphan Defence Closing Statement), pp. 2-23, 26-27, 30-32, 35-40; T. 31 October 2013 (KHIEU Samphan Defence Rebuttal), pp. 63, 65-66; Submissions by Mr. KHIEU Samphan's Defence regarding the Questioning of the Accused, E288/4, 5 July 2013, paras 8, 30; Urgent Request for Clarification of the Trial Chamber Decision of 15 August 2013 concerning Objections to the Admissibility of Written Statements and Deferral of the Timeline for Filing Final Briefs, E299/1, 2 September 2013, paras 33-36; Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay of Proceedings, E275/2/1/1, 1 August 2013, paras 20-68; Immediate Appeal against Second Severance Order and Response to Co-Prosecutors' Appeal against Same, E284/4/1, 27 May 2013, paras 12, 33; Indications of Witnesses and Documents Germane to the Initial Phases of the First Trial, E131/1/6, 2 November 2011, para. 16; Request for Additional Witnesses & Continuation of Initial Hearing, E93/9, 5 July 2011, paras 2-11.

[122] T. 5 April 2011 (Trial Management Meeting), pp. 56-57; *See also*, Directive in Advance of Initial Hearing concerning Proposed Witnesses (TC), E93, 3 June 2011, p. 2; T. 27 June 2011 (Initial Hearing), pp. 7-8.

[123] Directive in Advance of Initial Hearing concerning Proposed Witnesses (TC), E93, 3 June 2011, p. 2.

[124] *See e.g.* Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 29; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013,

47. On 22 September 2011, the Chamber severed the charges in Case 002, notifying the parties of the scope of Case 002/01 and informing them that additional charges could later be included within the scope of Case 002/01.[125] On 18 October 2011, the Chamber clarified that, although the development of the five policies as a general matter fell within the scope of, and could be examined in Case 002/01, there would be no examination of the implementation of policies other than those pertaining to the specific factual allegations falling within the scope of Case 002/01.[126] The same day, the Chamber also notified the parties of the topical and procedural sequence in which the Chamber would hear the evidence in Case 002/01.[127] Following the first two trial segments concerning the historical background, Democratic Kampuchea policies and administrative and communication structures, the Chamber began hearing evidence relating to the factual allegations falling within the scope of Case 002/01 and the responsibility of the Accused on 2 October 2012.

48. On 8 October 2012, the Chamber extended Case 002/01 to include executions of former Khmer Republic officials at Tuol Po Chrey.[128] After the Supreme Court Chamber annulled the Trial Chamber's severance order and all related decisions,[129] the Trial Chamber consulted the parties as directed by the Supreme Court Chamber and decided again to sever the case along the lines previously determined.[130] The hearing of evidence concerning executions at Tuol Po Chrey commenced the week of 29 April 2013.

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paras 23-24; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, para. 20; Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 117.

[125] Severance Order Pursuant to Internal Rule 89*ter*, E124, 22 September 2011, paras 5-6.

[126] Decision on Co-Prosecutor's Request for Reconsideration of the Terms of the Trial Chamber's Severance Order (E124/2) and Related Motions and Annexes, E124/7, 18 October 2011, para. 11; *See also*, Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011, p. 2.

[127] Decision on Co-Prosecutor's Request for Reconsideration of the Terms of the Trial Chamber's Severance Order (E124/2) and Related Motions and Annexes, E124/7, 18 October 2011; *See also*, Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011, p. 2.

[128] Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of the Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs (TC), E163/5, 8 October 2012.

[129] Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01 (SCC), E163/5/1/13, 8 February 2013.

[130] Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 88.

49. In sum, the Chamber provided the parties sufficient, timely and clear notice of the charges falling within the scope of Case 002/01 and the conduct of the trial. The Chamber also re-iterates that generalised submissions concerning the scope and conduct of future trials in Case 002 cannot demonstrate any concrete impact on the fairness of the trial in Case 002/01.[131]

2.4.6. ***Right to Propose Witnesses***

50. NUON Chea argues that the Chamber preferred inculpatory witnesses and failed to call witnesses important to his Defence.[132] Both Accused argue that the Chamber failed to provide reasons for its decisions not to call certain witnesses, thus obliging the Accused to speculate and adopt a splintered approach to their defence.[133]

51. In response to the Trial Chamber's Preparation Order of 17 January 2011, the parties proposed a cumulative total of 1,054 witnesses.[134] In considering which of these individuals to summons, the Chamber weighed the rights of all parties to propose evidence, the need to hold a public hearing following the confidential investigation, the Accused's right to confront witnesses and the right of each Accused to a fair and expeditious trial.[135] During the Initial Hearing in June 2011 and during Trial Management Meetings in April 2011, August 2012 and June 2013, the Chamber provided the parties indications as to those witnesses it intended to call or not call in relation to upcoming segments of the trial, invited oral and written submissions, and repeatedly encouraged parties to indicate those witnesses they deemed most vital to

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[131] *See e.g.* T. 13 June 2013, pp. 47, 54.

[132] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 41-59, 91; T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 37-40, 43-44; T. 31 October 2013 (NUON Chea), pp. 30-31; T. 31 October 2013 (NUON Chea Defence Rebuttal), p. 38.

[133] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 89; T. 13 June 2013, pp. 79-80; Request for a Public Oral Hearing regarding the Calling of Defence Witnesses, E212, 22 June 2012, paras 13, 18-24; Indications of Witnesses and Documents Germane to the Initial Phases of the First Trial, E131/1/6, 2 November 2011, paras 4-8, 11-14.

[134] Order to File Material in Preparation for Trial (TC), E9, 17 January 2011.

[135] *See e.g.* Agreement, Article 13(1); Final Decision on Witnesses and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014; Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency (TC), E218, 3 August 2012, para. 12; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 1.

their cases.[136] All individuals requested by the parties were kept under review over the course of the trial.

52. Ultimately, the Chamber heard 92 individuals, including 20 proposed by NUON Chea and 23 proposed by KHIEU Samphan (the latter including 5 character witnesses). The majority of the other individuals proposed by NUON Chea and KHIEU Samphan, including some identified as vital, were rejected as being irrelevant to Case 002/01 (and accordingly deferred to future trials); irrelevant to Case 002 generally (including many proposed regarding the course and conduct of the judicial investigation or in support of general allegations regarding the independence of the judiciary and political interference); repetitive; or inadequately identified.[137] The Chamber also notes that some witnesses proposed by the Accused died prior to the conclusion of the evidentiary hearing in Case 002/01 (*see e.g.* TCW-482 and TCW-699) or could not be located with the exercise of reasonable diligence.[138] Other mechanisms were nonetheless provided to enable the parties to introduce in written form relevant statements and other information concerning witnesses not called or the topics upon which they had been expected to testify.[139]

53. In order to show that fair trial rights have been violated as a result of the non-appearance of a witness, an accused must demonstrate that he exhausted all available measures to obtain that witness's testimony or tender the evidence sought in another form, such as a witness statement.[140]

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[136] Final Decision on Witnesses and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014.

[137] Annexes II and III of Final Decision on Witnesses and Civil Parties to be Heard in Case 002/01, E312.2, 7 August 2014.

[138] Memorandum from the Witness and Expert Support Unit to the President of the Trial Chamber entitled "Potential Witnesses - Unable to Locate", E292/1/2, 4 July 2013.

[139] *See e.g.* Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber,E96/7, 20 June 2012, paras 20-26; Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency (TC), E218, 3 August 2012; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013, para. 24.

[140] *Renzaho* Appeal Judgement, paras 169 (the accused's "failure to seek a remedy at trial undermines his claim of prejudice"), 191, 196, 216, 217 ("Any party is, of course, free to refrain from applying for such measures. However, a party cannot circumvent its obligation to exhaust all available means to present its case by unilaterally determining that certain measures are unreasonable or futile"), 218; *Lukić and Lukić*, Appeal Judgement, paras 44-45, 58; *Tadić* Appeal Judgement, para. 55.

54. The Chamber considers that all parties were able to propose those witnesses they deemed most important to their case and, where those witnesses were not called, to put before the Chamber other evidence they considered to be exculpatory or conducive to ascertaining the truth, including witness statements. Pursuant to Internal Rule 84(4), the parties may appeal decisions concerning the summonsing of witnesses, experts and Civil Parties only at the same time as the final appeal from the judgement.[141]

2.4.7. *Ability of the Defence to Place the Crimes in their Context*

55. NUON Chea argues that limitations on the hearing of evidence concerning the historical context of the crimes hindered his ability to mount a full and effective Defence. In particular, he submits that historical topics including the American bombing of Cambodia between 1969 and 1973, living conditions in Cambodia prior to 1975 and the post-1979 political context (insofar as it relates to the collection of evidence and the role Vietnam played in recording the history of the CPK "to suit its political agenda") should have been included in order to permit the Chamber to assess the context of his actions. He also submits that the Co-Prosecutors were permitted to adduce evidence of the historical context, while he was not, thus violating the principle of equality of arms.[142]

56. Where an accused argues that his fair trial rights were violated by limitations on his ability to adduce evidence concerning the historical context of the crimes, he must demonstrate concrete prejudice, namely how it would impact on his guilt or innocence.[143]

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[141] *See* Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014, Section 3.2.8, Separate Opinion of Judges NIL Nonn, YA Sokhan and YOU Ottara and Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014, Section 3.2.8, Separate Opinion of Judges Silvia CARTWRIGHT and Jean-Marc LAVERGNE.

[142] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 51-55, 57-59, 91;T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 21-25, 40-42; *See also*, Immediate Appeal against Second Severance Order and Response to Co-Prosecutors' Appeal against Same, E284/4/1, 27 May 2013, paras 13-19; Motion in Support of 'IENG Sary's Motion to Add New Trial Topics to the Trial Schedule' and Request to Add Additional Topics, E89/1, 25 May 2011, paras 2, 8-9; Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context, E182, 16 March 2011, paras 14-29.

[143] *Nahimana et al.* Appeal Judgement, paras 249-250.

57. The first trial segment in Case 002/01 focused on the historical context of the crimes. During this segment and throughout the trial, the Chamber heard evidence concerning the American bombing campaign in Cambodia between 1969 and 1973, living conditions prior to 17 April 1975 and the post-1979 context from witnesses and experts, including seven proposed by NUON Chea. Various pieces of documentary evidence, proposed by all parties and relevant to the historical context (including the American bombing campaign in Cambodia between 1969 and 1973, living conditions prior to 17 April 1975 and the post-1979 context) were also admitted.[144]

58. The Chamber notes that it is bound by the facts contained in the Closing Order pursuant to Internal Rule 98(2), as severed in Case 002/01, and its obligation to ensure that trials are fair and expeditious. The Chamber therefore excluded some evidence of facts falling outside the scope of Case 002/01 or the Closing Order, including some relating to the historical context.[145] NUON Chea, however, fails to demonstrate either that the evidence admitted concerning the historical context of the crimes was insufficient or how other evidence would have had a concrete impact on his guilt or innocence. Indeed, NUON Chea indicated that he chose not to fully explore the historical context and other matters outside the scope of Case 002/01, in part, as a matter of strategy, not inability.[146] Accordingly, the Chamber finds that the rights of the Accused to present a defence were not violated.

2.4.8. *Right to Examine Witnesses, Civil Parties and Experts*

59. The Accused submit that their right to effectively examine witnesses, Civil Parties and experts and the principle of equality of arms were infringed by arbitrary and unfair limitations on the scope of questioning and the material that could be used

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[144] David CHANDLER, SAO Sarun, Al ROCKOFF, Sydney SCHANBERG, KAING Guek Eav, Stephen HEDER and Philip SHORT. NUON Chea initially proposed 132 witnesses relevant to the historical background (Summaries of Proposed Witnesses, Experts and Civil Parties, E9/10, 23 February 2011); *See e.g.* Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutor's Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012.

[145] *See e.g.* Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, para. 27; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, para. 34.

[146] Immediate Appeal against Second Severance Order and Response to Co-Prosecutors' Appeal against Same, E284/4/1, 27 May 2013, paras 18-19.

to challenge the credibility of the individuals heard in court.[147] Further, NUON Chea and KHIEU Samphan argue that the Chamber violated their rights by admitting statements and prior testimony of witnesses, Civil Parties and experts absent the opportunity for confrontation.[148]

60. Pursuant to Internal Rules 85 and 87, the President and Chamber excluded proceedings and lines of questioning that unnecessarily delayed the trial or were not conducive to ascertaining the truth. The Chamber encouraged all parties to limit their examination of persons called at trial to matters falling within the scope of Case 002/01.[149] Further, taking into account the capacity in which individuals were called to give evidence, the Chamber limited the scope of questioning in order to ensure that examination did not stray into irrelevant topics.[150]

61. All parties were permitted to use any of the documents on their Internal Rule 80(3) lists in questioning individuals to refresh their memory, corroborate or draw relevant inferences from the substance of a document based on their direct knowledge or to test credibility.[151] Further, all parties were able to propose new evidence for use

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[147] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 58, 60-79, 91; T. 22 October 2013 (NUON Chea Defence Closing Statement), pp. 41-47; T. 31 October 2013 (NUON Chea), p. 31; Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013, paras 95-96; Withdrawal of Notice of Intent pursuant to Internal Rule 90, E287/2, 30 July 2013, paras 2, 10-11, 13-14; Immediate Appeal against Second Severance Order and Response to Co-Prosecutors' Appeal against Same, E284/4/1, 27 May 2013, para. 77. NUON Chea argues that the Chamber's decisions concerning the scope and procedure for examining individuals heard in court had "no or virtually no reasoning" thereby violating the Accused's right to a reasoned decision (NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 89). Beyond this general assertion, he fails to either identify those decisions he believes to be deficient or substantiate this argument. The Chamber is therefore unable to assess this submission and summarily dismisses it.

[148] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 102-115 (requesting the Chamber to take this fact into account in its final assessment of evidence and disregard statements going to proof of live issues in Case 002/01 absent the opportunity for confrontation); T. 22 October 2013 (NUON Chea Defence Closing Statement), p. 44; T. 31 October 2013 (NUON Chea Defence Rebuttal), p. 36; T. 25 October 2013 (KHIEU Samphan Defence Closing Statement), p. 89.

[149] Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011, p. 2; Consolidated Schedule of Witnesses and Experts for Early 2013 (TC), E236/4, 8 January 2013, para. 2.

[150] For example, Stephen HEDER declined appointment as an expert and was therefore called as a witness solely in relation to the numerous documents he authored on the case file (Announcement of Remaining Hearings Prior to the Close of Evidentiary Proceedings in Case 002/01 and Scheduling of Final Trial Management Meeting for 13 June 2013 (TC), E288, 31 May 2013, para. 4). Examination on topics beyond those documents he authored on the case file was therefore not allowed.

[151] Notice to the Parties Regarding Revised Modalities of Questioning and Response to Co-Prosecutors' Request for Clarification Regarding Use of Documents during Witness Testimony (E201) (TC), E201/2, 13 June 2012.

during questioning provided that they satisfied the requirements of Internal Rule 87(4) or demonstrated that the proposed evidence was in the interests of justice, for example because it was exculpatory or related closely to the testimony of a witness.[152] Finally, in the interest of just and expeditious proceedings, the Chamber admitted statements of certain individuals not called to give oral evidence, noting that no conviction would be solely or decisively based thereupon.[153] For example, the Chamber admitted statements of witnesses and Civil Parties in place of their oral evidence insofar as such statements were relevant to proof of matters other than the acts and conduct of the Accused as charged in the Closing Order, including the historical background, administrative and communications structures, the crime base, Democratic Kampuchea policies, the impact of the crimes on victims and/or the contextual elements of crimes against humanity.[154]

62. Insofar as the Accused allege unfair limitations on their ability to challenge evidence and examine witnesses, they fail either to demonstrate prejudice or that they exhausted other available means, for example by submission in rebuttal or the proposal of documentary evidence. The Chamber finds that the right of the Accused to challenge evidence and examine witnesses was not infringed.

2.4.9. ***Right to Adversarial Debate***

63. KHIEU Samphan argues that the key document presentation hearings were limited to presentation of documents and excluded real adversarial debate, since the opportunity to challenge the entirety of the evidence submitted at trial can take place

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[152] Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para. 36; Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses François PONCHAUD and Sydney SCHANBERG (E243) and Experts Philip SHORT (E226, E226/1 and E230) and Elizabeth BECKER (E232 and E232/1) (TC), E260, 18 January 2013, para. 5; Response to Your Letter of 21 June 2012 concerning the Trial Chamber's Decision on IENG Sary's Rule 87(4) Request (E172/24/4/1) (TC), E172/24/4/4, 16 July 2012, para. 4.

[153] Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 28 (noting that the Chamber would not rely upon statements admitted in place of oral testimony in considering the acts and conduct of the accused as charged), 29; *See also*, Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber,E96/7, 20 June 2012, para. 21.

[154] Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013.

only at the end of the hearing.[155] Further, KHIEU Samphan and NUON Chea argue that the time and facilities provided for closing submissions were insufficient considering the thousands of documents admitted in Case 002/01 (particularly those admitted late in the trial), the appearance of 92 individuals, the complexity of the case and discrepancies in translations.[156]

64. A court may provide the opportunity for adversarial debate in various ways, but "whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will get a real opportunity to comment thereon".[157] For the reasons that follow, the Chamber decides that the parties have had the opportunity for adversarial debate.

2.4.9.1. *Initial Lists of Evidence (Internal Rule 80(3))*

65. Following a judicial investigation lasting more than three years during which the Accused had access to the Case File including the inculpatory and exculpatory information collected, the Chamber ordered the parties to file lists of proposed evidence by 13 April 2011 pursuant to Internal Rule 80(3).[158] Following the severance of Case 002 and again after the extension of the trial to include executions of former

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[155] Urgent Request for Clarification of the Trial Chamber Decision of 15 August 2013 concerning Objections to the Admissibility of Written Statements and Deferral of the Timeline for Filing Final Briefs, E299/1, 2 September 2013, paras 37-43; Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013, paras 67, 78-91, 97-98; T. 9 July 2013, pp. 44-46, 70-85 (arguing, *inter alia*, that there is uncertainty regarding the totality of evidence to be admitted and therefore, until these uncertainties are resolved, the Defence cannot make submissions on probative value); Submissions by Mr. KHIEU Samphan's Defence regarding the Questioning of the Accused, E288/4, 5 July 2013, paras 31-32; T. 13 June 2013, pp. 10-19; Mr. KHIEU Samphan's Motion Reasserting His Right to a Fair and Adversarial Criminal Trial, E263, 11 February 2013, paras 4, 35-36, 39-40, 46, 55; T. 19 October 2012, pp. 9, 62-64, 69-70; Motion in Response to the Numerous Difficulties Raised by Ms. LAMB's E-Mail dated 2 February 2012, E167, 3 February 2012, paras 10, 13, 14, 22.

[156] Submissions by Mr. KHIEU Samphan's Defence regarding the Questioning of the Accused, E288/4, 5 July 2013, paras 33-34; Mr. KHIEU Samphan's Motion Reasserting His Right to a Fair and Adversarial Criminal Trial, E263, 11 February 2013, paras 41, 48, 51-53; T. 13 June 2013, pp. 9-10, 39-43 (KHIEU Samphan requested a 300-page briefs); T. 9 July 2013, pp. 47, 74; Observations concerning Trial Chamber's Request to Receive Final Legal Submissions by 21 December 2012, E163/5/5, 26 November 2012, paras 3-9, 13, 23-24, 26 (NUON Chea requested a 180-page brief); Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013, paras 73-74, 77; *See also*, T. 25 October 2013 (KHIEU Samphan Defence Closing Statement), pp. 32-33.

[157] *Öcalan v. Turkey*, ECtHR (Application No. 46221/99), Judgement, 12 May 2005, para.146 *citing Brandstetter v. Austria*, ECtHR (Application No. 11170/84, 12876/87 and 13468/87), Judgement, 28 August 1991, para. 67; *See also, Kayishema and Ruzindana* Appeal Judgement, para. 80.

[158] Order to File Material in Preparation for Trial, E9, 17 January 2011.

Khmer Republic officials at Tuol Po Chrey, the Chamber directed the parties to file revised lists of evidence relevant to the factual allegations falling within the scope of Case 002/01.[159] On an on-going basis, the Chamber admitted that evidence which was relevant to various topic segments and witnesses. Where the Co-Prosecutors or Civil Party Lead Co-Lawyers failed to exercise reasonable diligence in presenting evidence, thereby impeding the opportunity for adversarial challenge, the Chamber excluded that evidence.[160] In the absence of demonstrated prejudice, an accused is expected to rely on the initial lists of evidence provided by the other parties in preparing and presenting his case.[161]

2.4.9.2. *Admissibility Hearings*

66. The Chamber provided the parties the opportunity to object to the admissibility of evidence in oral and written submissions throughout the proceedings,[162] inviting and entertaining submissions from the parties as to the time and facilities required to adequately make such objections.[163] Even though objections that go beyond the *prima facie* relevance and reliability of proposed evidence do not impact upon their

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[159] Severance Order Pursuant to Internal Rule 89*ter*, E124, 22 September 2011; Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of the Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs (TC), E163/5, 8 October 2012.

[160] *See e.g.* Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 40-42; Response to Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1) (TC), E276/2, 10 April 2013, para. 4; Decision on Internal Rule 87(4) Request of the Co-Prosecutors to Put before the Chamber Document D366/7.1.366 (TC), E298, 14 August 2013.

[161] *Kanyarukiga* Appeal Judgement, paras 52-53 (an accused's "general claim that he had to address immaterial information [due to decisions on the admissibility of evidence issued at the end of the trial] is insufficient to show that he suffered prejudice and that the fairness of the proceedings was undermined").

[162] In addition to the opportunity to file written objections, the parties were also provided the opportunity to make oral submissions concerning the admissibility of evidence during hearings totaling 14 days (16-19 January 2012, 16 February 2012, 12-15 March 2012 and 21-24 January 2013).

[163] Scheduling of Oral Hearing on Documents (16-19 January 2012) (TC), E159, 11 January 2012; Scheduling of Oral Hearing on Documents (13-16 February 2012) (TC), E170, 9 February 2012, paras 6-7; Further Oral Hearing on Documents (commencing 12 March 2012) (TC), E172/1, 24 February 2012; Updated Memorandum for next document hearing (12-19 March 2012) (TC), E172/5, 2 March 2012, para. 2; Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223) (TC), E223/2, 19 October 2012; Revised Schedule for Forthcoming Document Hearing (Commencing Monday 21 January 2013) (TC), E223/3, 17 January 2013; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013, paras 4-12 (setting out the procedural history of admissibility hearings before the Chamber).

admissibility, the parties availed themselves of these opportunities to make detailed submissions on matters relevant to probative value and thus weight to be assigned to evidence at the conclusion of proceedings. The Chamber considers these submissions and objections in its final assessment of the evidence.[164]

2.4.9.3. *Key Document Presentation Hearings*

67. After having invited and considered submissions from the parties as to the time necessary for presentation of key documents, the Chamber provided the parties a proportional opportunity in four different hearings, totalling 16 days, to highlight those documents they deemed most relevant to particular segments of the trial.[165] As documentary evidence at the ECCC need not be tendered during the examination of individuals appearing before the Chamber, these hearings were intended to assist the Chamber and the parties in identifying those documents particularly relevant to a given trial segment and provide public accessibility to the documentary aspect of the trial.[166]

68. During the first two key document presentation hearings, all counsel were precluded from responding to those documents presented by the other parties.[167] The Accused, however, were given the opportunity to comment on the key documents presented.[168] During the second two key document presentation hearings, the

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[164] *See* Section 2: Preliminary Issues, 2.3.3 and 2.3.4 (on impartiality of the Trial Chamber and facilities and time available for the preparation of a defence).

[165] Scheduling of Oral Hearing on Documents (13-16 February 2012) (TC), E170, 9 February 2012; Direction to Parties following Hearing of 21 September 2012 (TC), E233, 24 September 2012; Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223) (TC), E223/2, 19 October 2012;Revised Schedule for Forthcoming Document Hearing (Commencing Monday 21 January 2013) (TC), E223/3, 17 January 2013; Announcement of Remaining Hearings Prior to the Close of Evidentiary Proceedings in Case 002/01 and Scheduling of Final Trial Management Meeting for 13 June 2013 (TC), E288, 31 May 2013; Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013.

[166] Scheduling of Oral Hearing on Documents (13-16 February 2012) (TC), E170, 9 February 2012, para. 2; T. 13 June 2013, pp. 7-8.

[167] Scheduling of Oral Hearing on Documents (13-16 February 2012) (TC), E170, 9 February 2012; Direction to Parties following Hearing of 21 September 2012 (TC), E233, 24 September 2012, paras 3-4.

[168] Scheduling of Oral Hearing on Documents (13-16 February 2012) (TC), E170, 9 February 2012; Direction to Parties following Hearing of 21 September 2012, E233, 24 September 2012, paras 2-3.

Chamber permitted all parties and counsel to comment on the documents presented.[169] Further, during the final key document presentation hearing, the Accused and their counsel were given the opportunity to comment on all documents presented in any key document presentation hearing and invited indications as to the time required to do this.[170] KHIEU Samphan and his counsel declined to avail themselves of this opportunity.[171]

2.4.9.4. *Closing Submissions*

69. On 3 August 2012, the Chamber notified the parties that it proposed an expedited schedule for final submissions and directed the parties to allocate the necessary resources to enable them to prepare their final briefs in parallel with the on-going trial.[172] The parties were given the opportunity to make submissions concerning the procedure for closing submissions during a Trial Management Meeting on 27 August 2012.

70. In October and November 2012, the Chamber notified the parties of the procedure and schedule for closing submissions.[173] Closing Briefs were limited to 200 pages for the Co-Prosecutors, 80 pages for the Civil Party Lead Co-Lawyers and 100 pages for each Accused and were due 30 days following the last day of the

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[169] Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223) (TC), E223/2, 19 October 2012;Revised Schedule for Forthcoming Document Hearing (Commencing Monday 21 January 2013) (TC), E223/3, 17 January 2013; Announcement of Remaining Hearings Prior to the Close of Evidentiary Proceedings in Case 002/01 and Scheduling of Final Trial Management Meeting for 13 June 2013 (TC), E288, 31 May 2013; Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013.

[170] Announcement of Remaining Hearings Prior to the Close of Evidentiary Proceedings in Case 002/01 and Scheduling of Final Trial Management Meeting for 13 June 2013 (TC), E288, 31 May 2013; T. 13 June 2013, pp. 7-8; T. 9 July 2013, pp. 69-70, 89-90; Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013.

[171] T. 13 June 2013, pp. 10-19; T. 9 July 2013, pp. 73-74, 76-78, 80-85.

[172] Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency (TC), E218, 3 August 2012, para. 20.

[173] Notification of Decision on Co-Prosecutors' Request to Include Additional Crimes Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs (TC), E163/5, 8 October 2012; Further Notification of Modalities for Closing Briefs (TC), E163/5/4, 26 November 2012.

substantive hearing in Case 002/01.[174] The parties also had the opportunity to file separately 20-page submissions on the applicable law by 21 December 2012.[175] In the event the parties did not avail themselves of this opportunity, they were free to make any submissions in the pages allotted for Closing Briefs or time allotted for Closing Statements.[176] Subsequently, the Chamber twice extended the deadline for Closing Briefs, resulting in a 26 September 2013 deadline. The Chamber also extended each party's page limit by 25 pages, clarifying that end notes did not count towards the page limit.[177]

71. On 17 June 2013, the Chamber notified the parties of the schedule for Closing Statements, allotting three days to the Co-Prosecutors, one day to the Civil Party Lead Co-Lawyers and two days to each of the Accused.[178] The Civil Party Lead Co-Lawyers and the Co-Prosecutors were together provided a day for rebuttal and the Accused two hours each for rejoinder and final statements.[179] Closing statements were initially scheduled for 30 days after the filing of Closing Briefs in one official language of the ECCC and later adjusted to 16-31 October 2013.[180] In order to assist the parties in preparing for Closing Statements, the Chamber and the Defence Support Section provided the Accused access to interpreters.[181]

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[174] Further Notification of Modalities for Closing Briefs (TC), E163/5/4, 26 November 2012.

[175] Notification of Decision on Co-Prosecutors' Request to Include Additional Crimes Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs (TC), E163/5, 8 October 2012, para. 4.

[176] Further Notification of Modalities for Closing Briefs (TC), E163/5/4, 26 November 2012; T. 13 June 2013, pp. 27-28.

[177] Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3) (TC), E295/4, 22 August 2013, para. 2 (extending the deadline to 19 September 2013); Response to E-mailed Requests for Extension of Time (TC), E295/6, 12 September 2013, para. 5; Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013; T. 23 July 2013, p. 71 (resulting in a 225 page limit for the Co-Prosecutors, a 125 page limit for each Accused and a 105 page limit for the Civil Party Lead Co-Lawyers)

[178] Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013; *See also,* Internal Rule 94; Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3) (TC), E295/4, 22 August 2013, para. 6.

[179] Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3) (TC), E295/4, 22 August 2013, paras 4, 6; *See also,* Internal Rule 94.

[180] Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3) (TC), E295/4, 22 August 2013, paras 5-6.

[181] Adjusted Schedule for Closing Submissions (E295/1, E295/1/2, E295/1/3, E295/2 and E295/3) (TC), E295/4, 22 August 2013, para. 5;Response to E-mailed Requests for Extension of Time (TC), E295/6, 12 September 2013, para.4; *See also,* Decision on KHIEU Samphan Request for Declaration of

72. Between the first day of Opening Statements on 21 November 2011 and the first day of Closing Statements on 16 October 2013, there were 480 days on which the Chamber did not sit (including weekends, national holidays, recesses and various adjournments, for example those resulting from the health of the Accused). The Accused were on notice from 3 August 2012 that they were expected to allocate facilities and resources, including non-sitting days, during the trial in preparing Closing Briefs. Finally, the Chamber extended deadlines and adapted page limits and other facilities as circumstances required and in the interests of justice. Thus the Chamber does not consider that the Accused's rights to adversarial debate or to present a defence were violated by the procedures set for closing submissions.[182]

2.4.9.5. *Conclusion*

73. The Accused fail to demonstrate how the various procedural rulings, alone or taken together, precluded a real opportunity for adversarial debate. The Chamber cannot be held accountable for the failure of the Accused or his counsel to use the various opportunities provided, in particular when the Chamber repeatedly attempted to accommodate their concerns by providing further time or opportunities to comply. Accordingly, the Chamber considers that the right of the Accused to adversarial debate was not infringed.

2.4.10. ***Right of the Accused to Make Statements and Respond to Questioning***

74. KHIEU Samphan submits that the Chamber impeded his right to present a defence and comment on the evidence against him when it denied his requests to: receive lists of questions and documents to be used in his questioning; limit questioning to half-day sessions; and be provided three weeks to consult with his counsel prior to questioning. He also alleges prejudice arising from the failure of the

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Inadmissibility of the Co-Prosecutors' Closing Brief (E295/7), E295/7/2, 14 October 2013, para.6 (noting that the KHIEU Samphan Defence in fact availed itself of this facility).

[182] The ICTY Appeals Chamber considered that a deadline for closing briefs 11 days after the close of the hearing of evidence was not prejudicial to an accused's rights insofar as there were numerous non-sitting days over the course of the trial and the parties had sufficient notice (one year) that they were expected to allocate resources in such a way as to allow for development of their brief over the course of the trial (*Krajišnik* Appeal Judgement, para. 94).

Chamber to ensure his counsel had access to the detention facilities on weekends.[183] Thus, considering that the Chamber refused to give the Accused a "worthy, fair and composed question time", the Accused "exercised the only right he ha[d] left, to remain silent until the closure of the 'proceedings' and to make a final statement after closing arguments".[184] Further, both KHIEU Samphan and NUON Chea indicated that they refused to submit to questioning at the conclusion of the hearing of evidence on the basis that their fair trial rights were violated throughout the proceedings.[185]

75. Pursuant to Internal Rules 85 and 90, the President, in consultation with the judges of the Trial Chamber, may decide on reasonable procedures for the statements or questioning of an accused so long as the rights of the accused are respected.[186]

76. The Chamber granted KHIEU Samphan's request for prior notification of the documents the parties intended to use in questioning and to testify in half-day sessions. The Chamber, however, specifically indicated that it was unable to calculate how long the Accused would be able or willing to answer questions and therefore declined to place any further time limitations on questioning. Considering the length of the investigation and trial and the fact that the Accused was on notice of the charges against him throughout, the Chamber also denied KHIEU Samphan's requests for a three week adjournment to prepare for questioning and notification of the topics and questions the other parties planned to canvas.[187]

77. In relation to the request for a list of topics or questions to be covered in questioning, the Chamber affirms its previous finding that the Accused was expected to know the case against him and the context of questioning, particularly by the

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[183] T. 9 July 2013, pp. 40-43; T. 13 June 2013, pp. 37-38; Submissions by Mr. KHIEU Samphan's Defence regarding the Questioning of the Accused, E288/4, 5 July 2013, paras 11-22, 26-27, 38; Urgent Request by the Defence Team of Mr. KHIEU Samphan for an Immediate Stay or Proceedings, E275/2/1/1, 1 August 2013, paras 71-72, 75, 99.

[184] Submissions by Mr. KHIEU Samphan's Defence regarding the Questioning of the Accused, E288/4, 5 July 2013, para. 5, 23-24, 40; T. 9 July 2013, pp. 41, 42-43.

[185] T. 9 July 2013, pp. 41, 42-43; T. 17 July 2013, pp. 67-68; Withdrawal of Notice of Intent pursuant to Internal Rule 90, E287/2, 30 July 2013, paras 3-4, 18.

[186] *See also*, *Seromba* Appeal Judgement, paras 19-20; *Blagojević and Jokić* Appeal Judgement, paras 27-29.

[187] Schedule for the Final Document and Other Hearings in Case 002/01, for the Questioning of the Accused and Response to Motions E263 and E288/1 (TC), E288/1/1, 17 June 2013, paras 8-9; T. 13 June 2013, pp. 26-27.

conclusion of the hearing.[188] In any event, the Co-Prosecutors and Civil Party Lead Co-Lawyers were willing to provide KHIEU Samphan with lists of questions.[189] Further, the Chamber's refusal to place time limits on the questioning of the Accused was reasonable and intended to accommodate the willingness and ability of KHIEU Samphan to continue at any given point. Finally, the Chamber notes that the Accused and his counsel both indicated that, even if all Defence requests concerning the manner and procedure for the Accused's questioning were granted, KHIEU Samphan still would not have responded to questioning on the basis that his rights were violated throughout the proceedings.[190] In this regard, the Chamber affirms its findings above, and throughout the proceedings, that both Accused's fair trial rights were respected over the course of the trial.

78. NUON Chea and KHIEU Samphan exercised their right not to give evidence when the opportunity was provided.[191] The Accused had various opportunities throughout the hearing to make statements and respond to questions. On various occasions they availed themselves of these opportunities.[192] Pursuant to Internal Rule 94(3), the Accused also had a final opportunity to make statements on 31 October 2013. They took advantage of this opportunity.[193] The Chamber therefore finds that there was no infringement of the Accused's right to make statements or respond to questions as provided in Internal Rules 81(6), 89*bis*, 90, 91*bis* and 94.[194]

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[188] *Krajišnik* Appeal Judgement, para. 370 (considering the indictment, pre-trial brief, witness and evidence lists, and his presence during trial, the Chamber found that the accused was "well-aware of the context of the Prosecution's questions and of the Prosecution's case against him" when he testified in his own defence).

[189] T. 9 July 2013, pp. 32-39; Co-Prosecutors' Response to KHIEU Samphan's Withdrawal from Testifying and a Request for Adverse Inferences to be Drawn, E288/4/1, 16 July 2013, para. 10.

[190] T. 9 July 2013, pp. 41-47.

[191] *Blagojević and Jokić* Appeal Judgement, para. 28 (where an accused's own choices interfere with his right to give evidence, he cannot claim a violation of his fair trial rights).

[192] *See* Section 2: Preliminary Issues, 2.3.4.2 (on sources of evidence).

[193] T. 31 October 2013, pp. 68-73; T. 31 October 2013, pp. 1-34.

[194] The Chamber notes that insofar as these rules provide the other parties the right to question an accused, they confer on an accused a corresponding right to respond, if he/she intends to do so, emanating from his/her rights to remain silent, to adversarial debate and to present a defence.

3. HISTORICAL BACKGROUND[195]

79. The events during the Democratic Kampuchea era must be understood within the context of events that preceded it and in particular the development of the Communist Party of Kampuchea ("CPK"). As the CPK grew, it developed and put into practice a number of policies in order to achieve its goals. The existence of each of these policies is examined in this section in order to provide a full picture of the situation prior to 17 April 1975. This section considers the historical development of CPK policies while their overall implementation will be the subject of subsequent chapters which comprise a general overview of events during the temporal scope of the charges or the specific crimes charged in this case.[196] Two of these policies, the forced movement of the population and the targeting of Khmer Republic soldiers and civilian officials, are the subject of charges within Case 002/01 and are consequently examined in greater detail. Further to the existence and, where relevant, the implementation of the CPK policies, the Chamber examines below the general conditions in Phnom Penh leading up to the final assault of the city which began in January 1975 and culminated in the takeover and evacuation of Phnom Penh on 17 April 1975.

3.1. General Overview and Establishment of the CPK

80. In establishing the history of the CPK set out below, the Chamber has relied upon the testimony of NUON Chea and on a number of key documents, including *Revolutionary Flag* magazines and the transcript of a 1998 interview[197] given by NUON Chea to KHEM Ngun, a former assistant to Ta Mok.[198] When questioned about this interview, NUON Chea attempted to discredit KHEM by stating before the Chamber that the latter was a spy for HUN Sen, a Co-Prime Minister of the

[195] The evidence discussed in this section is for the purpose of establishing the historical and factual context of events within the temporal jurisdiction of the ECCC. Such may include: clarifying a given context, establishing by inference the elements of criminal conduct within the temporal jurisdiction of the ECCC, or demonstrating a deliberate pattern of conduct. *See Nahimana* Appeal Judgement, para. 315.

[196] *See* Section 4: General Overview; Section 10: Movement of the Population (Phase One); Section 11: Movement of the Population (Phase Two); Section 12: Tuol Po Chrey.

[197] T. 14 December 2011 (NUON Chea), pp. 40-43; Video Record of NUON Chea testimony, E1/23R, 15 December 2011 (session 2) at 50:00-50:15 (Counsel repeating 1998 as date of interview).

[198] NUON Chea Interview by KHEM Ngun, E3/3, Undated, fn. 1; T. 15 December 2011 (NUON Chea), pp. 45-46.

Cambodian government at the time the interview was recorded. At the beginning of the interview, NUON Chea emphasised that his recollections were incomplete and that it was difficult to recall particular events going back over many years. The Chamber finds his answers in the interview consistent with other statements he made, including in court. There was no suggestion that he was being untruthful in the interview or that the transcript was inaccurate. In court, NUON Chea acknowledged that he had "mostly" told the truth to KHEM Ngun in this interview, noting only that he had possibly withheld certain information from him.[199] As it is the truth of the contents of the interview, not the reliability of KHEM Ngun's record of the interview which is at issue, the Chamber is satisfied that the transcript of the interview constitutes a reliable basis for factual findings.

81. The first developments of the history of communism in Cambodia are closely linked with the fight against French colonial authorities and especially the armed struggle after World War II, carried out by Khmer Issaraks and the Indochina Communist Party.[200] In 1951, the Indochina Communist Party, led by HO Chi Minh and with branches in Vietnam, Laos and Cambodia,[201] held a Congress attended by NUON Chea. During the Congress, the Vietnamese-led Party renamed its branches, with the branch in Cambodia becoming the Khmer People's Revolutionary Party (KPRP).[202]

82. In late 1953, after NORDOM Sihanouk had successfully launched his "Royal Crusade for Independence," Cambodia again became autonomous. Following the signing of the Geneva Accords in 1954 which nominally ended the first Indochina

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[199] T. 15 December 2011 (NUON Chea), p. 45 ("as for whether I was truthful or not, it depended on the situation at that time, it depended on what I saw Khěm Ngun as a person. At some point, I talked truthfully, but at some other point, I refrained from saying things").

[200] Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, pp. 51-53, ERN (En) 00237756-58 (In addition to communists and Issaraks, the nationalists of the Democrat Party asked for Cambodian independence but disavowed armed resistance and promoted moderate social change through legal means).

[201] T. 5 December 2011 (NUON Chea), p. 51 ("Everything was under the control of Vietnam from the Hanoi headquarters or from the Ho Chi Minh headquarters"), pp. 63-64.

[202] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 5, ERN (En) 00184656; T. 5 December 2011 (NUON Chea), p. 64; T. 30 January 2012 (NUON Chea), pp. 40-41; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 6, ERN (En) 00716414.

war[203], Cambodia, Laos and Vietnam obtained their full independence and foreign troops in Indochina, including Viêt Minh soldiers stationed in Cambodia, were obliged to withdraw from their positions.[204] Cambodian communist representatives, however, were not permitted to participate in the negotiations, nor did they obtain any concessions arising from their support of Viêt Minh forces during the common fight against the French army.[205] After the withdrawal of Viêt Minh forces from Cambodia, all Cambodian communist organisations were dissolved[206] leaving former members of the KPRP vulnerable to repression by NORODOM Sihanouk's State authorities.[207] This situation was later described by SALOTH Sar *alias* POL Pot, NUON Chea and KHIEU Samphan as the first sign that Viêt Minh leaders could not be trusted to safeguard Cambodian interests and that their sole purpose was to establish and control an Indochinese Federation.[208]

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[203] Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, pp. 77-79, ERN (En) 00237782-84.

[204] Comité des Patriotes du Kampuchéa Démocratique en France publication: *For the Survival of Kampuchea as a Nation*, E3/617, September 1979, p. 8, ERN (En) S 00721503 (alleging that: "Pursuant to the Geneva Agreements (20 July 1954), the Vietnamese were obliged to withdraw from Kampuchea. However, they returned with close to 2,000 Khmers, the majority of whom were youth. After 15 years of indoctrination, they succeeded in training some of them to become servile agents"). *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 6, ERN (En) 00184657 (pursuant to "the agreement regarding Kampuchea, all foreign armies had to withdraw from Kampuchea").

[205] By contrast, the Lao communists were given two Lao provinces near the Vietnamese border as their own territory and they were given all rights denied to the Cambodian communists: Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, p. 77, ERN (En) 00237782.

[206] KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 4-5, ERN (En) 00498223-24.

[207] T. 31 January 2012 (NUON Chea), p. 11 (after the Geneva Agreements there were only a handful of combatants remaining who were allied with the Communist cause); NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 7, ERN (En) 00184658 ("According to the Geneva Agreement of 1954, all of our comrades who were called the Khmer Viet Minh who had rejoined and who were then living in Kampuchean society were suppressed, arrested, imprisoned, put in chains, and secretly killed by Sihanouk's state authorities […] In general, the Khmer Peoples [sic] Revolutionary Party had almost dissolved"); *See also*, T. 15 December 2011 (NUON Chea), pp. 48-49 (The situation worsened with the defection of SIEU Heng, the husband of NUON Chea's aunt who was then at the head of the KPRP and who rallied to Sihanouk and LON Nol in 1959).

[208] Comité des Patriotes du Kampuchéa Démocratique en France publication: *For the Survival of Kampuchea as a Nation*, E3/617, September 1979, p. 8, ERN (En) S 00721503 (alleging that between 1945-1954 "[t]he Vietminh, under the pretext of fighting French colonialism, came and settled in Kampuchea and in Laos and took advantage of that circumstance to recruit agents devoted to them on the basis of a false 'proletarian internationalism' and the 'Indochinese Federation' cult"); *See also*, KHIEU Samphan Interview Transcript, E3/4027, ERN (En) 00790536 (the establishment of the Khmer Revolutionary Armed Forces was "based upon the stance of independence and mastery that originated from study of the experience gained from the 1954 Geneva Agreement [and which] concluded that it was impossible to rely upon Vietnam, to rely upon other foreign countries.")

83. In 1955, NORODOM Sihanouk renounced the throne in order to become the Chief of the Cambodian state. He won an election and launched the Sangkum party which established a neutral foreign policy that included as a policy a refusal to join the Southeast Asia Treaty Organization.[209] At that time, SON Ngoc Minh went to Hanoi and SIEU Heng controlled the Khmer communist movement particularly in the countryside, while TOU Samuth was Deputy Party Secretary responsible for Phnom Penh. Later, when SIEU Heng's defection to NORODOM Sihanouk and LON Nol was revealed, TOU Samuth replaced SIEU Heng as the head of the party.[210] NUON Chea worked in secret on behalf of the KPRP and, in late 1955, was appointed party secretary for Phnom Penh,[211] where he and POL Pot acted as TOU Samuth's assistants.[212] Between 1955 and 1960, however, the party remained disorganised and nearly dissolved.[213]

84. In 1959, TOU Samuth, POL Pot and NUON Chea began the process of creating a new Cambodian party free of the Vietnamese influence characterised by the Indochina Communist Party.[214] According to KHIEU Samphan, the three men formed the Phnom Penh City Committee pending the election of new leadership.[215] Expert Philip SHORT notes that KHIEU Samphan was assigned the task of rallying intellectual support and reaching out to potential communist sympathisers in

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[209] Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, pp. 80-83, ERN (En) 00237785-88.

[210] NUON Chea Interview by KHEM Ngun, E3/3, Undated, pp. 10-11, ERN (En) 00184661-62.

[211] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 7, ERN (En) 00184658; *See* Section 7: Roles and Functions – Nuon Chea, para. 308.

[212] NUON Chea Interview by KHEM Ngun, E3/3, Undated, pp. 7-8, ERN (En) 00184658-59; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 8-9, ERN (En) 00716416-17.

[213] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 7, ERN (En) 00184658; NUON Chea: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 8, ERN (En) 00716416.

[214] T. 19 July 2012 (David CHANDLER), pp. 27-28; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 7-11, ERN (En) 00498226-30; Two other founding members, MEI Mann and CHAN Saman, abandoned their work early on: Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 7, ERN (En) 00498226; Book by E. BECKER, *When the War Was Over*, E3/20, 1986, 1986, p. 92, ERN (En) 00237797 ("since the Khmer communists held their meeting to elect leaders for the Khmer People's Revolutionary Party, the Cambodians had ceased to be a carbon copy of the old Vietnamese ICP").

[215] Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 7, ERN (En) 00498226, 00498229.

mainstream political life.[216] IENG Sary was also a member of the Phnom Penh City Committee.[217]

85. Around the same time, NORODOM Sihanouk coined the term "Khmer Rouge" to refer to the Pracheachon, a semi-legal arm of the communist party in Cambodia.[218] The term "Khmer Rouge" however was never used by members of the Communist movement to describe themselves.[219]

86. POL Pot and NUON Chea drafted the Party Statute and the Party's strategic and tactical lines either on orders from TOU Samuth or of their own initiative.[220] According to NUON Chea, the strategic line was based on a social analysis of Cambodian society which was divided into classes: half-colonialist and half-feudalist. The first task was to conduct a national revolution based on the worker-peasant alliance assembling the forces of the people, including capitalists (whose spirit of patriotism encompassed attacking America), imperialists and feudalists, in order to liberate the nation. The Party Statute also adopted Marxism-Leninism and

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[216] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 132, ERN (En) 00396332; T. 7 May 2013 (Philip SHORT), pp. 24-25; *See also*, Book by IN Sopheap: *KHIEU Samphan: Agrandi and Réel*, E3/4602, ERN (Fr) 00906858-59 (reporting NUON Chea's statement as follows: "Certes, tout ce que faisait Khieu Samphan n'était pas de son initiative: il le faisait sur instructions du parti et avec l'assistance du parti, envers lequel il a toujours été honnête, droit et loyal […] Le Parti lui indiquait les grandes lignes. Il les développait et les propageait dans son journal et dans l'assemblée et les faisait parvenir aux masses populaires. […] Khieu Samphan était très peu au courant des activités réelles du parti. Son rôle consistait à travailler parmi les intellectuels car il était un érudit. Il menait très bien son travail de Ranaksé Sratoap Leu (front uni avec les couches sociales supérieures"), ERN (Fr) 00906757 (reporting KHIEU Samphan as stating "Tous [les étudiants] propageaient les activités de lutte de leurs organisations préférées. Je les écoutais, ne demandant qu'à les croire, mais sans m'engager. Tout cela était trop 'politique' pour moi. […] 'J'étais bien étranger à ce qui se passait à l'époque'"), ERN (Fr) 00906760 (IN Sopheap adds, "Khieu Samphan n'était pas connu pour être un militant démocrate. Il était resté un bon fils de bourgeois et un élève plutôt sage, (et très moyen, précise-t-il). En comparaison des autres camarades lycéens que nous venons de voir, Sau Ngoy, Vorn Vet, Hu Nim, Tiv Ol, (qui avaient à peu près son âge), il semblait présenter peu de dispostions [sic] pour la révolution.")

[217] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 9, ERN (En) 00184660.

[218] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 114-115, ERN (En) 00396306-07; Book by D. CHANDLER: *Brother Number One: A Political Biography of Pol Pot*, E3/17, 1999, pp. 66, 214, ERN (En) 00392980, 00393128; Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, p. 100, ERN (En) 00237805.

[219] Book by D. CHANDLER: *Brother Number One: A Political Biography of Pol Pot*, E3/17, 1999, pp. 66, 214, ERN (En) 00392980, 00393128.

[220] T. 6 December 2011 (NUON Chea), pp. 13-14; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 11-12, ERN (En) 00716419-20 (NUON Chea states: "*Ta* TOU Samut was not useful because he was old and not so knowledgeable. Therefore, there were only SALOTH Sa [sic] and me. IENG Sary was a leftist and stubborn person."); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498229-30.

"democratic centralism" as founding principles of the Party. According to NUON Chea, "the Party had to be built from the countryside [and] the city, using the countryside as a support base, [and] the city as the fuse."[221]

87. From 28 to 30 September 1960[222], the First Party Congress was secretly convened in a disused building where UK Sokun resided at the railway station in Phnom Penh to adopt the statute and to appoint the leadership committee.[223] This new party was initially called the Workers' Party of Kampuchea and later renamed the Communist Party of Kampuchea.[224] According to KHIEU Samphan, the members of the Phnom Penh City Committee later formed the membership of the Central Committee of the CPK.[225] TOU Samuth was appointed Secretary and NUON Chea was appointed Deputy Secretary of the Party, with POL Pot, SAO Phim and MA Mang as the other members of the Standing Committee.[226] In addition, Central Committee members were recruited, including TOU Samuth, NUON Chea, POL Pot, MA Mang, IENG Sary, KEO Meas, Chong and VORN Vet.[227] According to NUON Chea, SON Sen was also appointed a candidate or alternate member of the Standing Committee at that time and Chong was not.[228] In addition to representatives of urban areas, the Party invited ten to fifteen representatives from rural areas to study the

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[221] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 15, ERN (En) 00184666; *See* Section 5: Administrative Structures, paras 223-228 (on democratic centralism).

[222] Two weeks before the First Congress, Vietnamese in Hanoi made official their decision to fight in South Vietnam "to liberate the south from the rule of the American imperialists and their henchmen" and three months later the National Liberation Front was established to that end. Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, p. 93, ERN (En) 00237798.

[223] T. 22 November 2011 (NUON Chea), p. 82; *Revolutionary Flag*, E3/11, September 1977, p. 15, ERN (En) 00486226; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 33-34, ERN (En) 00417631-32 (UK Sokun); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-12, ERN (En) 00498229-31; NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 11, ERN (En) 00184662.

[224] T. 5 December 2011 (NUON Chea), pp. 65-66, 69; Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, 1986, p. 93, ERN (En) 00237798.

[225] Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 10, ERN (En) 00498229.

[226] T. 22 November 2011 (NUON Chea), p. 82; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 33, ERN (En) 00417631; NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 11, ERN (En) 00184662.

[227] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, , pp. 11-12, ERN (En) 00716419-20; T. 10 January 2012 (NUON Chea), pp. 19-25, 35; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 33, ERN (En) 00417631; *See* Section 5: Administrative Structures, para. 202.

[228] T. 10 January 2012 (NUON Chea), pp. 24-25, 32-36; *See* Section 5: Administrative Structures, paras 202-203 for the distinction between the Central and Standing Committees.

Party lines and the Party Statute.[229] There is no surviving documentation from the meeting, possibly because nothing was prepared other than the Party Statute itself.[230]

88. According to NUON Chea, the First Congress decided to use arms only if necessary to protect their forces.[231] Throughout the period of Democratic Kampuchea ("DK era"),[232] however, the CPK leaders, including NUON Chea, IENG Sary and POL Pot stated on many occasions that the First Congress in 1960 adopted "revolutionary violence" and decided to use "armed struggle" to achieve its goals.[233] The use of "revolutionary violence" had been the subject of disagreement between Khmer Rouge leaders and Vietnamese communists from the signing of the Geneva Agreement throughout the 1960s. In January and May 1959 for example, the Vietnamese Workers' Party agreed to change from political to armed struggle against the Republic of South Vietnam, but they opposed the Cambodian communists adopting the same strategy.[234]

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[229] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, , p. 12, ERN (En) 00716420; *Revolutionary Flag*, E3/11, September 1977, p. 15, ERN (En) 00486226; *Pol Pot's Press Conference in Peking* (in SWB Collection), E3/2072, 3 October 1977, ERN (En) S 00080547.

[230] Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 12, ERN (En) 00498231.

[231] T. 22 November 2011 (NUON Chea), p. 83; T. 11 January 2012 (NUON Chea), pp. 32-33, 38-40.

[232] *See* ECCC Agreement (defining the period of Democratic Kampuchea from 1975-1979 and establishing temporal jurisdiction from 17 April 1975 to 6 January 1979); *See also*, ECCC Law, Articles 1-8.

[233] *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS Collection), E3/147, 17 January 1977, ERN (En) 00168467 ("Since 1960, our Cambodian Revolutionary Organization had drawn up the strategic and tactical lines for revolution in a democratic nation […] after 1960 our Revolutionary Organization clearly decided that political action and armed violence must be used to overthrow and crush the enemy."); *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 19, ERN (En) 00491412 ("revolutionary political and armed violence" and "armed violence"), p. 24, ERN (En) 00491417 ("beginning in 1960 […] the Party had a strategic line and a tactical line including making ready for revolutionary violence and setting up an army"); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 12, ERN (En) 00498231 ("'exploiting classes'" were the primary enemy of the Cambodian revolution and 'the tools of the American imperialists.' Thus, the Cambodian people had to smash the 'feudalist regime' whether by peaceful methods or by other means."); Article by D. BURSTEIN: *Interview with Deputy Prime Minister Ieng Sary*, in *Kampuchea Today: An Eyewitness Report From Cambodia*, E3/707, December 1978, p. 42, ERN (En) S 00049323 ("armed struggle"); *Pol Pot's Press Conference in Peking* (in SWB Collection), E3/2072, 3 October 1977, ERN (En) S 00080547 ("We attached special importance to violent struggle, unfolding both violent political struggle and armed struggle with armed struggle as the main form.")

[234] Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 89, ERN (En) 00237794; *See also*, Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 11-12, ERN (En) 00498230-31 (According to KHIEU Samphan in a letter to the Cambodian Party leadership in late 1959, the Vietnamese Workers' Party noted its support of the Sihanouk regime and encouraged the

89. Around February 1962, Party Secretary TOU Samuth was probably arrested and then disappeared, necessitating the appointment of a new Party Secretary during the Second Party Congress held in February 1963 on Charles de Gaulle Street in Phnom Penh.[235] Members of the Standing Committee at the time were POL Pot, SAO Phim, IENG Sary and NUON Chea.[236] Other members present included Keu (alias Sophal), Chong, VORN Vet, MUOL Sambath *alias* ROS Nhim, Ta Mok, and MA Mang.[237] It is possible that SON Sen was present, although NUON Chea's statements in this regard are not entirely clear.[238] The Second Party Congress appointed POL Pot as the Party Secretary and NUON Chea as Deputy Party Secretary. It reaffirmed the use of political and armed revolutionary violence.[239] In 1963, together with other individuals, IENG Sary and POL Pot, both listed as "progressive", were summoned by NORODOM Sihanouk under the pretext of forming a new government. Fearing arrest they joined the underground near the Vietnamese border.[240]

90. In 1965, POL Pot travelled to Vietnam and China to unveil the recently-formulated strategic lines of the CPK.[241] Although the Vietnamese were unhappy that the CPK failed to consult them in establishing the CPK Statute, the Communist Party of China considered that the CPK party lines were in accordance with doctrine and

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Cambodian Communist Party to seek power through elections thereby avoiding class struggle and the use of revolutionary force. In support of this strong recommendation they referred to Khrushchev's views regarding "the parliamentary road to socialism" espoused during the 20th Party Congress of the Soviets in Moscow.)

[235] T. 12 January 2012 (NUON Chea), p. 10; T. 5 December 2011 (NUON Chea), pp. 76-78; NUON Chea Interview by KHEM Ngun, E3/3, Undated, pp. 14-15, ERN (En) 00184665-66; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 34, ERN (En) 00417632; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 14-15, ERN (En) 00716422-23 (referring to *third* general assembly, but in 1963).

[236] NUON Chea Interview by KHEM Ngun, E3/3, Undated, p. 16, ERN (En) 00184667; T. 12 January 2012 (NUON Chea), p. 15.

[237] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 15-16, ERN (En) 00716423-24.

[238] T. 12 January 2012 (NUON Chea), p. 16; NUON Chea Interview by Khem Ngun, E3/3, Undated, ERN (En) 00184667; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 16-17.

[239] *Revolutionary Flag*, E169/4/1.1.2, Dec 1975-Jan 1976, p. 7, ERN (En) 00865697; T. 7 May 2013 (Philip SHORT), pp. 26-28 (Sihanouk allowed no room for opposition so violence was the only option available to the Khmer Rouge).

[240] T. 20 July 2012 (Expert David CHANDLER), pp. 65-67; *See also*, Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 17-18, ERN (En) 00498236-37.

[241] T. 13 December 2011, p. 26 (NUON Chea); T. 31 January 2012, p. 17 (NUON Chea); Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 17, ERN (En) 00716425 (POL Pot travelled to North Vietnam to seek contacts for the party and to China to explain the movement).

this enabled the CPK to liaise with other communist parties at the time.[242] Around this time, the CPK headquarters of Office 100 moved to Ratanakiri.[243]

91. In 1967, there was a spontaneous uprising in Samlaut village in Battambang that was the result of land disputes caused by members of the army and civil servants taking land from Samlaut villagers.[244] The party leadership considered it was premature to initiate an armed revolution at the time.[245] Nonetheless, the 1967 Samlaut rebellion in Battambang marked the beginning of armed struggle and civil war in Cambodia.[246]

92. Because he never thought the peasants would rebel against him, NORODOM Sihanouk was very upset by the Samlaut rebellion and moved to quash it with great force.[247] He blamed the influence of the Chinese Cultural Revolution and ordered the Cambodian-Chinese Friendship Association, of which HU Nim was the President, dissolved.[248] KHIEU Samphan, who had joined the CPK with HU Nim, was threatened with arrest and to be brought to the military court under the pretext that he was a ringleader of the rebellion.[249] NUON Chea then took KHIEU Samphan, HU Nim and the other intellectuals, including HOU Youn, to the forest because they were now in danger in Phnom Penh.[250]

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[242] T. 13 December 2011 (NUON Chea), p. 26; T. 31 January 2012, p. 17 (NUON Chea); Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 17, ERN (En) 00716425.

[243] T. 12 January 2012 (NUON Chea), pp. 18-21 (discussing his travels to Office 100, "As I recall it, they moved to Rattanakiri before 1966").

[244] T. 13 December 2011 (NUON Chea), pp. 10-16; T. 19 July 2012 (David CHANDLER), pp. 34-35; T. 20 July 2012 (David CHANDLER), pp. 71-72; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 17, ERN (En) 00716425.

[245] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 17, ERN (En) 00716425.

[246] T. 19 July 2012 (David CHANDLER), pp. 34-35.

[247] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 32, ERN (En) 00103739; T. 13 December 2011, p. 88 (KHIEU Samphan); T. 13 December 2011, pp. 11-12 (NUON Chea); T. 19 July 2012 (David CHANDLER), p. 35.

[248] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 32, ERN (En) 00103739.

[249] T. 13 December 2011, pp. 87-88, 91 (KHIEU Samphan).

[250] T. 13 December 2011 (KHIEU Samphan), p. 87; T. 25 July 2012 (David CHANDLER), pp. 40-41; T. 9 May 2013 (Philip SHORT), p. 54; T. 9 October 2012 (MEAS Voeun), pp. 40, 44; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 21-22, 23, 25-26, ERN (En) 00103733-00103734, 00103735-00103736; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 18, 20, ERN (En) 00716426, 00716428.

93. The events at Samlaut triggered further revolt and, on 17 January 1968, there was an armed attack at Bay Damram, Battambang, by which CPK forces were able to confiscate some weapons from police posts.[251] The Party subsequently adopted this event as the birth of the Revolutionary Army of Kampuchea ("RAK").[252]

94. The North Vietnamese needed the Sihanouk government's support, or at least its continuing neutrality, to supply the war against the Americans in Vietnam.[253] They therefore continued to oppose armed struggle in Cambodia and requested that the CPK cease making armed attack or at least to leave bridges intact to permit the transport of weapons and rice from Kampong Thom to the Cambodia-Vietnam border.[254] Because of this opposition, the Communist Vietnamese did not provide arms or any form of support to the Khmer Rouge forces.[255]

95. The Third Party Congress was held in 1971 in the Party office near Trapeang Prei village in the jungle.[256] It was presided over by POL Pot and NUON Chea. It was attended by all members of the CPK leadership and representatives from each zone, many of whom appeared in photographs taken at the Congress.[257] Although

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[251] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 17-18, ERN (En) 00716425-26.

[252] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 18, ERN (En) 00716426; T. 13 December 2011 (NUON Chea), pp. 10-16 (NUON Chea does not clearly recall the founding date or event; he states: "To the best of my recollection, the founding date of the Revolutionary Army of Kampuchea was on the 12th of January 1968"); Central Committee Decision, E3/12, 30 March 1976, p. 2, ERN (En) 00182810; *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 18-19, ERN (En) 00491411-12; *Revolutionary Flag*, E3/744, February 1978, ERN (En) 00464050-00464069.

[253] Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 18, ERN (En) 00716426 (the Vietnamese party opposed the armed attacks, accusing the CPK of attacking their fathers because at that time Sihanouk was practising neutral politics. The Chinese did not agree either); *See* Section 3: Historical Background, paras 153-156.

[254] T. 31 January 2012 (NUON Chea), pp. 39-41; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 18, ERN (En) 00716426.

[255] T. 31 January 2012 (NUON Chea), pp. 40-41; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 18, ERN (En) 00716426 ("We asked for some weapons from the Vietnamese, but they did not give them to us. So we stole the weapons.").

[256] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 8-10, 33.

[257] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 33-34. Witness stated the following were present at the Third Party Congress (Zone 304 - KOY Thuon, KE Pauk and Doeun; Zone 203 - SO Phim, Phuong, and Ta Tum; Special Zone – VORN Vet; Southwest Zone – Ta Mok, Ta Chong, Ta Si; Northwest Zone – ROS Nhim, Ta Keu, and Ta Ktal; Sector 103 – unnamed leader; Northeast Zone – Ya and Vong; Mondulkiri – Laing); Photograph, E3/136, P 00416593; Photograph, E3/137, P 00416592; Photograph, E3/1595, P 00416590. NUON Chea was unable to identify the persons in the photo labelled ERN (EN) P00416593 except KOY Thuon. *See* T. 10 January 2012, pp. 25-27-28. NUON Chea was provided a copy of each photograph and his counsel indicated they would respond in due course. *See* T. 14 February 2012, p. 101.

ROCHOEM Ton *alias* PHY Phuon did not recall KHIEU Samphan being present, KHIEU Samphan himself stated that he had attended the 1971 Party Congress and that he became a candidate member of the Central Committee in 1971.[258] The Congress ratified the change in party name from Worker's Party of Cambodia to the CPK, and created the Special Zone encompassing Phnom Penh and controlled by VORN Vet.[259] It reiterated the Party's strategic lines adopted at the 1st and 2nd Congresses.[260]

3.2. Sihanouk's Overthrow and the Creation of FUNK and GRUNK

96. By 1969 the economy in Cambodia was flagging and there was uncertainty as to whether it would be dragged into the war in Vietnam despite Sihanouk's official policy of neutrality.[261] From 1969, American bombings in Cambodia served to push North-Vietnamese troops further into Cambodia which heightened the crisis.[262] On 12 March 1970, while NORODOM Sihanouk was in Paris, the Vice-President of South Vietnam, NGUYEN Cao Ky, secretly visited Phnom Penh and formed an alliance with Prime Minister LON Nol.[263]

97. Encouraged by his Deputy SIRIK Matak, on 18 March 1970, LON Nol signed a decree approving the overthrow of NORODOM Sihanouk who was in Moscow and on his way to Beijing at the time.[264] The same day, the Cambodian National Assembly approved a vote of no confidence in NORODOM Sihanouk and required that he

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[258] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 34; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 76, ERN (En) 00498295; T. 13 December 2011 (KHIEU Samphan), p. 92; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751.

[259] Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 76-77, ERN (En) 00498295-96; T. 5 December 2011 (NUON Chea), pp. 15-16, 69-70.

[260] *Revolutionary Flag*, E169/4/1.1.2, Dec 1975-Jan 1976, p. 14, ERN (En) 00865704.

[261] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 185-187, ERN (En) 00396385-87.

[262] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 185, ERN (En) 00396385; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* E3/88, pp. 67-68, ERN (En) 00429754-55; *See* Section 3: Historical Background, paras 153-156.

[263] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 195-196, ERN (En) 00396395-96.

[264] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 197, ERN (En) 00396397 ("Sihanouk was told [of the coup] in Moscow by Premier Alexei Kosygin as they were driving to the airport for his departure to Beijing"); Norodom Sihanouk Declaration, E3/1756, 23 March 1970, ERN (En) 00852373; Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, 1986, pp. 115-117, ERN (En) 00237820-22.

relinquish his office as Chief of State.[265] Confronted with these events, NORODOM Sihanouk on 23 March 1970 announced in a radio broadcast from Beijing the creation of a political movement, the National United Front of Kampuchea ("FUNK"), called upon his compatriots to join the resistance and to fight against those who instigated the coup, and promised to provide them with military training and weapons.[266] According to POL Pot, NORODOM Sihanouk first presented a draft of this message to the Chinese Prime Minister ZHOU Enlai who then obtained comments from POL Pot, who was in Beijing and removed any reference in the statement to socialism.[267] POL Pot then drafted a message of support to NORODOM Sihanouk in the name of KHIEU Samphan, HOU Youn and HU Nim and had it delivered to NORODOM Sihanouk on 26 March 1970 without meeting him or disclosing his presence in Beijing.[268] This account is corroborated by KHIEU Samphan.[269]

98. In May 1970, NORODOM Sihanouk formed a new government in exile, the Royal Government of National Union of Kampuchea ("GRUNK"). NORODOM Sihanouk served as the head of state of GRUNK as well as chairman of FUNK.[270] Officially, KHIEU Samphan was the Deputy Prime Minister and the Minister of National Defence of GRUNK.[271] KHIEU Samphan testified that POL Pot appointed

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[265] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 197, ERN (En) 00396397.

[266] Message and Solemn Declaration of Samdech Norodom Sihanouk, E3/1756, 23 March 1970; T. 9 October 2012 (MEAS Voeun), pp. 50, 53-55; T. 22 November 2011 (NUON Chea) p. 90; T. 2 August 2012 (SUONG Sikoeun), pp. 69-70.

[267] DK Publication: *Black Paper*, E3/23, September 1978, pp. 35, 38, ERN (En) 00082530, 00082532 ("When the coup d'etat broke out in Kampuchea, the delegation of the Communist Party of Kampuchea was then in Peking. As for Prince Norodom Sihanouk, he had left Paris, paid an official visit to Moscow and arrived in Peking on March 19, 1970 […] The delegation of the Communist Party of Kampuchea examined and modified the political programme of the National United Front drawn up by Prince Norodom Sihanouk […] That was why [in] the March 23, 1970 declaration denouncing and condemning the coup d'etat of national treason […] There was no question of socialism or communism in that document."); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 200, 488, ERN (En) 00396400, 00396704.

[268] DK Publication: *Black Paper*, E3/23, September 1978, pp. 35, 38, ERN (En) 00082530, 00082532; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 200, 488, ERN (En) 00396400, 00396704.

[269] T. 13 December 2011 (KHIEU Samphan), pp. 88-89; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 39-40, ERN (En) 00498258-59.

[270] T. 13 December 2011 (KHIEU Samphan), p. 90; T. 8 August 2012 (SUONG Sikoeun), pp. 8, 10-11; T. 14 August 2012 (ONG Thong Hoeung), pp. 13-14; GRUNK Report: *Cambodia's Seat in the United Nations*, E3/28, 1973, pp. 24-27, ERN (En) 00068116-17.

[271] GRUNK report: *Cambodia's Seat in the United Nations*, E3/28, 1973, p. 31, ERN (En) 00068119.

him to these positions without his knowledge and that the titles were meaningless.[272] He admitted however that he served as the link between NORODOM Sihanouk and POL Pot, stating that, "I had to agree to assume the role as an important leader of the country's internal resistance. Frankly, this greatly embarrassed me a lot. But it was a 'sacrifice' I could not refuse if I wanted to contribute, in accordance with my possibilities at the time, to the battle for the salvation of our country."[273] KHIEU Samphan confirmed that since NORODOM Sihanouk did not know POL Pot, it was incumbent upon him to establish relations between the CPK and GRUNK.[274]

99. The FUNK's official policy was to unite and mobilise the social classes and to "overthrow the fascist and racist dictatorship of the American imperialists' flunkeys headed by Lon Nol-Sirik Matak."[275] The FUNK also guaranteed to all Cambodians basic freedoms including the freedom of religions and beliefs.[276] The GRUNK, and KHIEU Samphan in particular, officially supported this vision.[277]

100. In reality, the GRUNK administration in Cambodia was a façade, although GRUNK/FUNK had certain propaganda functions outside of Cambodia.[278] SUONG Sikoeun testified that NORODOM Sihanouk retained influence overseas and in diplomatic relations while the CPK was responsible for the armed struggle in Cambodia.[279] In 1973, for instance, NORODOM Sihanouk visited the Khmer Rouge liberated territories in Cambodia, providing support to the CPK in their fight against

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[272] T. 13 December 2011 (KHIEU Samphan), pp. 90-91; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745.

[273] T. 13 December 2011 (KHIEU Samphan), p. 90; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 42, ERN (En) 00103744.

[274] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745.

[275] FUNK Political Programme, E3/1391, ERN (En) S 00012636 [(Fr) 0029139189].

[276] FUNK Political Programme, E3/1391, ERN (En) S 00012638 [(Fr) 00291391] (The FUNK's objective as to "build a democratic and prosperous Cambodia [and to] Guarantee to all Cambodians, except traitors known to the country, the freedom of speech, the press opinion, association, demonstration, residence, travel at home and going abroad etc […] Safeguard the inviolability of the person, property, wealth and privacy of correspondence. Guarantee equality to both sexes […] Buddhism is and will remain to be the State religion, but the NUFK recognizes and guarantee the freedom of all other religions and beliefs […]".)

[277] GRUNK Report: *Cambodia's Seat in the United Nations*, E3/28, 19 June 1973, ERN (En) 00068116-7 [(Fr) 00068109-10]; T. 8 February 2012, p. 35; *KHIEU Samphan Issues Statement on Current Situation* (in FBIS Collection), E3/118, 1 April 1975, ERN (En) 00166898 ("Now the seven traitors have already forsaken you; you must follow the path of honor and national solidarity by joining the NUFC […] to build a prosperous nation in accordance with the policy of independence, peace, neutrality, sovereignty, democracy, territorial integrity and nonalignment.")

[278] *See* Section 5: Administrative Structures, paras 230-239.

[279] T. 8 August 2012 (SUONG Sikoeun), p. 41; T. 15 August 2012 (SUONG Sikoeun), pp. 60-61.

the LON Nol regime.[280] According to NORODOM Sihanouk, however, he had relinquished any power he had to the Khmer Rouge, remaining only a symbol of national unity.[281] He stated, "I am giving everything up to the Khmer Rouge […] Mr Khieu Samphan, the vice-Prime Minister and Minister of Defence is the leader of the resistance within Cambodia, in coordination with the North-Vietnamese and the Vietcong."[282] For its part, the FUNK established a radio station, directed by IENG Thirith, that was used to recruit cadres for the Party and to disseminate propaganda both inside and outside Cambodia.[283] Although commentary on FUNK radio was often unattributed, KHIEU Samphan issued statements on FUNK radio on at least several occasions.[284] The establishment of the FUNK was therefore intended to unite the communists and NORODOM Sihanouk, but was also used to attract a large number of peasants to join the CPK and their cause.[285]

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[280] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 242-244, ERN (En) 00396442-44; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 59, ERN (En) 00498278; Video of KHIEU Samphan entitled "Justice Delayed, Justice Denied", E3/3902R (depicting KHIEU Samphan and NORODOM Sihanouk in the jungle during Sihanouk's 1973 visit to the liberated zones); Video of KHIEU Samphan entitled "Justice Delayed, Justice Denied", E3/3904R (depicting KHIEU Samphan, Hu Nim *alias* Phoas, HOU Yuon and POL Pot with NORODOM Sihanouk, during Sihanouk's 1973 visit to liberated zones); Video of NORODOM Sihanouk entitled "Pol Pot et les Khmer Rouges", E3/3942R (depicting NORODOM Sihanouk visiting CPK leaders in 1973 and saying: "Here I'm talking about my country with my collaborators, M. IENG Sary *alias* Van.")

[281] Report by L. TRIVIÈRE: *China and Cambodia* E3/482, p. 16, ERN (En) 00524000 [(Fr) 00385704] (on 13 April 1973, NORODOM Sihanouk told Chinese and foreign journalists "After the war is over, Prince Sihanouk will only be a symbol of national unity, a head of state who will no longer have the powers he had before the events of 18 March 1970. In reality, power will be in the hands of the Khmer Rouge essentially") and p. 20-21 ERN (En) 00524004-00524005 [(Fr) 00385706-00385707] (NORODOM Sihanouk later replied in one interview: "I am fighting for them to allow me to live in Cambodia with them. [...] What do they have in store for me? I would like to know how their views regarding my status. Am I an ordinary citizen or a head of state? [...] I have virtually no relations the Khmer Rouge now [...]").

[282] Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, p. 9 ERN (En) 00523993; [(Fr) 00385701].

[283] T. 7 December 2011 (LONG Norin), pp. 65-66, 69-70 (IENG Thirith was in charge of the radio in Hanoi); T. 2 August 2012 (SUONG Sikoeun), 95-97 (IENG Thirith was the director; KHIEU Samphan and IENG Sary had no authority over the radio station).

[284] T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 93-94 (KHIEU Samphan encouraged people to gather all forces inside and outside the country); T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 66 (KHIEU Samphan urged LON Nol soldiers to join the revolution); T. 9 May 2013 (Philip SHORT), pp. 4-5 (statement regarding 7 traitors was a double-edged sword – implying those who did not join the revolution would meet the same fate); *Cambodians Urged to Unite in New Year's Offensive* (in FBIS Collection), E3/30, 31 December 1974, ERN (En) 00166659-61; U.S. Embassy Telegram, Subject: Cambodian Sitrep, E3/3292, 1 October 1970, ERN (En) 00418909; U.S. Embassy Telegram, Khmer Report, E3/3294, 8 November 1971, ERN (En) 00418938.

[285] T. 23 November 2011 (KHIEU Samphan), pp. 12-13; T. 13 December 2011 (KHIEU Samphan), pp. 89-92; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of*

101. Having surveyed the early history of the CPK and the events leading to the 1970-1975 civil war, the Chamber now examines the CPK policies that were being developed within the areas 'liberated' by the CPK prior to 1975.

3.3. Development of CPK Policies

102. According to the Closing Order, starting prior to 17 April 1975, CPK leaders designed and implemented a series of reforms, including the formulation of five policies that are the subject of Case 002:

1. The repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another;
2. The establishment and operation of cooperatives and worksites;
3. The re-education of "bad elements" and killing of "enemies", both inside and outside the Party ranks;
4. The targeting of specific groups, in particular the Cham, Vietnamese, Buddhists and former officials of the Khmer Republic, including both civil servants and former military personnel and their families; and
5. The regulation of marriage.[286]

103. Of these, the two policies concerning forced movement and the targeting of former officials of the Khmer Republic are the subject of the charges at issue in Case 002/01, though the existence of the other policies is also relevant.[287]

Democratic Kampuchea, E3/16, p. 40, ERN (En) 00498259; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, 2004, pp. 41-42, ERN (En) 00103743-44; Documentary by D. ARONOWITSCH and S. LINDBERG entitled "Facing Genocide - Khieu Samphan and Pol Pot", E3/4201R (also available at E109/2.3R); T. 11 January 2013 (CHHAOM Se), p. 35; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 2, ERN 00406211.

[286] Closing Order, paras 156-157, 1524-25.

[287] From the outset of Case 002/01, the Chamber informed the parties that they could lead evidence in relation to all five policies as background, but that the Chamber would examine the implementation of only those policies relevant to Case 002/01 (i.e. forced movement and execution of purported enemies of the regime). *See* Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 118 ("the inclusion within the scope of Case 002/01 of the alleged population movement and executions committed at Tuol Po Chrey, and associated crimes against humanity, enable examination of two of the five main themes of the Case 002 Closing Order, i.e. forced movement and execution of purported enemies of the regime."); *See also*, Response to issues raised by parties in advance of trial and scheduling of informal meeting with Senior Legal Officer on 18 November 2011, E141, 17 November 2011, p. 2 ("Regarding the examination of policies other than those relating to forced evacuation, the purpose of including reference to them in the first trial is to enable the manner in which policy was developed to be established. What is therefore envisaged is

3.3.1. ***Pre-1975 Movements of the Population***

104. Prior to 1975, the CPK carried out population movements in areas within their control. The policy was explained in the July 1973 issue of *Revolutionary Flag*:

> In the evacuation of people from the areas under the control of the enemy to the liberated zones, we took strong and optimistic views of mass population to successfully send them away to the countryside with no worry that people could be fraught with difficulty due to the [lack] of everything. In addition, we were not afraid that people in the liberated areas could not help the evacuated people. With strong popular views, we believe that our people could do everything. Although we were in the situation that we were lack of rice as we are now, we dared to evacuate many more people. Based on our past experiences, we see that people could resolve the problems.[288]

105. Therefore, Khmer Rouge forces removed people from enemy-controlled areas to the countryside despite the lack of rice there. Expert Philip SHORT explained that from 1970, villagers within Khmer Rouge controlled territory were transferred and sent to remote mountain and jungle areas. "Their original homes, if not already destroyed, were burned down to stop them returning […] [T]hey were dragooned into cooperatives of thirty or forty families who farmed the land in common."[289]

106. For example, about two months after NORODOM Sihanouk was deposed, the town of Kratie was taken by the Khmer Rouge and evacuated later in 1973.[290] Witness YUN Kim recalls that the town's markets were initially unaffected and commercial trade continued.[291] However, it was explained in the *Revolutionary Flag*

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presentation in general terms of the five policies, although the material issue for examination in the first trial is limited to the forced movement of the population (phases one and two). It follows that there will be no examination of the implementation of policies other than those pertaining to the forced movement of the population (phases one and two).") The existence of other policies is examined for background purposes only. Their implementation will be the subject of future trials; *See also*, Decision on KHIEU Samphan's Immediate Appeal against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/1/3, 29 July 2014, paras 84-85.

[288] *Revolutionary Flag*, E3/785, July 1973, ERN (En) 00713996; The Chamber notes that the term "evacuate" was used by the Khmer Rouge themselves to describe their own policy. While this word suggests the idea of moving people from a dangerous place or of providing a safer venue, the Chamber only uses this term to describe the movement of the population of cities and of Phnom Penh in particular. The proper characterisation of the movements is addressed in the judgement but the Chamber does not endorse the meaning indicated by Khmer Rouge usage of this term.

[289] T. 6 May 2013 (Philip SHORT), pp. 91-92 (confirming the accuracy of the relevant excerpt of his book); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 246, ERN (En) 00396446.

[290] T. 19 June 2012 (YUN Kim) pp. 29-31; T. 6 May 2013 (Philip SHORT), p. 91.

[291] T. 19 June 2012 (YUN Kim) pp. 29-31.

of August 1975 that the Kratie Market could not be permitted to continue as "commerce could not serve the lives of the people and could not serve the war of national liberation. It was clearly seen by mid-73 that there was no way out for us. We could not gather up the people. The businessmen were the masters."[292] Therefore the solution was to impose collectivisation. After the people were collectivised and communal eating began, money stopped being circulated, the markets were closed in Kratie, and the town was evacuated.[293]

107. In another example, Witness François PONCHAUD testified as to the transfer of the population of Kampong Cham in 1973, where he had lived prior to 1970.[294] Based on accounts of villagers who were expelled from their homes, the Witness testified that when Khmer Rouge soldiers captured a village, the houses in the village would be set on fire, the commune chiefs would be executed and people would be moved to the forest.[295] While Witness PHY Phuon claimed that the Khmer Rouge did not control Kampong Cham long enough to evacuate the population and the people quickly returned after the Khmer Rouge withdrew, the Chamber does not find this evidence reliable concerning this specific issue.[296] His opinion was speculative and differs markedly from other, more detailed, accounts describing the transfer of the city's population.[297]

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[292] *Revolutionary Flag*, E3/5, August 1975, ERN (En) 00401481.

[293] T. 19 June 2012 (YUN Kim) pp. 32-33; T. 6 May 2013 (Philip SHORT), p. 91.

[294] T. 9 April 2013 (François PONCHAUD) pp. 13, 53-54, 56; T. 10 April 2013 (François PONCHAUD), p. 8; Written record of Witness Interview, E3/370, ERN 00333952, p. 4 (François PONCHAUD); Unique among foreign witnesses, François Ponchaud testified in Khmer for much of his testimony. Concerned by the quality of the interpretation of his testimony (*see e.g.*, T. 10 April 2013, p. 96), the ECCC Interpretation and Translation Unit reexamined his testimony and recently amended the relevant transcripts. The Chamber notes that the amendments to the parts of the transcript cited in this judgement appear to have no impact on the substance of this evidence. In any event, the Chamber relies on the original language of the testimony where there is any doubt.

[295] T. 9 April 2013 (François PONCHAUD) p. 61; T. 10 April 2013 (François PONCHAUD) p. 3-4.

[296] T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 39.

[297] T. 6 May 2013 (Philip SHORT), pp. 91-92; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 257, ERN (En) 00396465 (discussing the evacuation of 15,000 dwellers from Kampong Cham in the second half of 1973, stated that some died of hunger and from bombings along the way, but most were resettled in villages where, as one peasant put it, 'they lived a normal life'); Document by KE Pauk: *Autobiography of Ke Pauk from 1949-1985*, E3/2782, undated, ERN (En) 00089710 (explaining that there was to be a two-pronged attack of Kampong Cham, but KOY Thuon's forces did not attack and they were unable to liberate the town completely, surrounding it instead); *See also*, Book by W. SHAWCROSS: *Sideshow:Kissinger, Nixon and the Destruction of Cambodia*, E3/88, 1991, p. 312 ("The day after the [American] bombing ended, the Communists launched an assault on the provincial capital of Kompong Cham, a vital road and river junction northeast of Phnom Penh. Through the summer they had easily rolled up the garrisons defending the

108. The strategy of evacuation of liberated territories was further explained in the *Revolutionary Flag* of December 1976 and January 1977:

> Throughout the world, they never capture [or seize] the people. Our line was to capture the people: one, we took him; two, we took them; 100, we took them; 1,000, we took them, and so on until we captured the people from Phnom Penh too. The line of taking away [or drying up] the people from the enemy was very correct. This never happened in the world. When the enemy has the people, the enemy has an army and an economy. When the enemy has no people, the enemy has no military and no economic strength. Our reasoning is correct. Thus, our line is very correct. We fight to capture the people at every location.[298] (emphasis added).

109. The same issue of the *Revolutionary Flag* cited the town of Banam as an example of the application of this strategy: "The fighting […] in Banam Town, expelling the ethnic Vietnamese, the ethnic Chinese, the military, the police; we took everyone, taking away the people from the enemy."[299]

110. There were varying interpretations of what it meant to "seize" or "capture" the people. In Philip SHORT's view "seizing the people" meant to exercise control over the population rather than over territory, and recalled the same tactic had previously been used by the communists in China.[300] Witness Stephen HEDER noted that "seize the people" could mean literally physically grasping a group of people but that it could also mean the change in administrative control or management of a contested area.[301] NUON Chea agreed with this latter interpretation stating that the CPK needed

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approaches to the town along National Road Nos. 6 and 7. Now they captured a large part of the city, led 15,000 people away into the countryside, and came within one hundred meters of the governor's mansion. […] After a long and bloody street battle the Communists finally withdrew. Sihanouk later complained bitterly that, but for the treachery of Hanoi in withholding supplies, the town would have been captured."); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 246, ERN (En) 00396446 [(Fr) 00639773] (citing an American consular officer in Vietnam who, on the basis of interviews with refugees fleeing relocations in 1973, stated "stories carried back by those who had survived earlier relocations told of people dying en route and forced labour after arrival").

[298] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491424; The ECCC translation unit on 28 July 2014 amended the translation of this document, changing the phrase "seize the people" to "capture the people". In addition, the term "drying up the people" has been changed to "taking away the people". The Chamber has relied on the Khmer original document which remains unchanged, but refers to the revised translation in the French and English documents in this judgement.

[299] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491424.

[300] T. 7 May 2013 (Philip SHORT), pp. 79; French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, p. 2, ERN (En) 00751832 ("Drawing inspiration from Mao's strategy, the CPK decided to surround the towns with countryside").

[301] T. 15 July 2013 (Stephen HEDER), pp. 22-23.

to bring the population within its newly-established economic order.[302] Consonant with NUON Chea's interpretation, POL Pot explained to KHIEU Samphan that the emptying of the cities was part of a collectivisation policy pre-dating the war that enabled the CPK to maintain control over the rice supply.[303] According to POL Pot, the CPK's ability to control the supply of rice forced Vietnam to respect Cambodia's sovereignty while Vietnamese troops operated in Cambodia.[304] The Chamber is satisfied that there was an economic rationale underlying the evacuation of cities in order to establish CPK control over the food supply and to provide workers for the fields.[305]

111. Nonetheless, the evacuations also constituted an attack on the enemy. On this point the Chamber finds Expert David CHANDLER's assessment to be convincing. He noted that there was a repetitive pattern in Khmer Rouge policy that reached its climax in the evacuation of Phnom Penh and other cities following the 17 April 1975 victory. The people in the cities were considered intrinsically disloyal and had to be removed.[306] As confirmed by several sources of evidence, the CPK leaders had concluded that city-dwellers would remain politically and ideologically corrupt if they were allowed to stay in the cities and would be difficult to control.[307] This was a long-held belief of NUON Chea who explained that urban people from an earlier time were "the corrupt society, the womanizing society, the society with alcohol" and contrasted them with the rural people living in the forests who were "clean".[308] As mentioned in various statements and testimonies, the people were "captured" and "taken away" from the enemy by moving the population out of urban areas such as Oudong, Kratie, Banam and Kampong Cham into the countryside.[309]

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[302] NUON Chea Closing Brief, paras 255-256. This is also consonant with the closure of markets in Kratie discussed above.
[303] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 57, ERN (En) 00103751.
[304] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 57, ERN (En) 00103751.
[305] *See* Section 3: Historical Background, paras 113-116.
[306] T. 19 July 2012 (David CHANDLER), pp. 60-63.
[307] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 256-257, ERN (En) 00396456, 00396465; T. 10 April 2013 (François PONCHAUD), pp. 9-10; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 14.
[308] T. 15 December 2011 (NUON Chea), p. 70.
[309] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491424; T. 19 June 2012 (YUN Kim) pp. 29; T. 6 May 2013 (Philip SHORT), p. 91; T. 9 April 2013 (François

112. Prior to the DK period, the Khmer Rouge built up a huge reservoir of hatred of city people among their followers.[310] The evacuation of cities therefore served a dual purpose, namely to prevent enemies from destabilising CPK forces, and also to prevent cadres from being corrupted by the urban population.[311] Based on the above, the Chamber is satisfied that a policy of repeated movements from towns and cities to rural areas existed before the DK period. There was an economic as well as a political rationale behind these movements.

3.3.2. *Establishment of Cooperatives and Worksites pre-April 1975*

113. In a process initiated in May 1972 and officially confirmed one year later, the Central Committee decided to close markets in the liberated zones and to establish cooperatives in order to "[attack] the power of the classes of feudalists, land owners, and capitalists and to cut off private trading."[312] The process of gradually establishing cooperatives varied depending on the zones and on the level of the cooperatives, but the central objective was to eliminate private ownership of land and the means of production and to replace it with a system of cooperative ownership with the State in complete control of commerce and executing an "absolute democratic revolution."[313] The CPK distributed circulars prohibiting people from selling food and supplies to the enemy and assigning them to produce crops collectively.[314] In 1972-1973, cooperatives were established in a number of regions within the control of the CPK,

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PONCHAUD) p. 61 ; T. 10 April 2013 (François PONCHAUD) p. 3-4 ; T. 19 June 2013 (NOU Mao), p. 42.

[310] T. 23 July 2012 (David CHANDLER), p. 49.

[311] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 32 (he learned this during study sessions chaired by POL Pot, NUON Chea or KHIEU Samphan discussing the CPK's positive experiences with forced evacuations); T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 26 (to fight the American imperialists and the regime everyone had to be absolute and determined so that "we" could not be bought by the American imperialists: "We had to be the very clean and proper people to achieve this triumph"); T. 20 March 2012 (KAING Guek Eav), p. 63; T. 5 April 2012 (KAING Guek Eav), p. 114 (similarly learned through *Revolutionary Flag* magazines that people were evacuated to ensure that when the enemy was attacked they would be deprived of people to support them, and this would isolate and render the enemy helpless).

[312] Report on Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 2, ERN (En) 00636009; *Revolutionary Flag*, E169/4/1.1.2, Dec 1975-Jan 1976, pp. 18-19, ERN (En) 00865708-09; *Revolutionary Flag*, E3/10, September-October 1976, pp. 10-11, ERN (En) 00450510-11.

[313] *Revolutionary Flag*, E3/5, August 1975, pp. 3-9, ERN (En) 00401478-84.

[314] *Revolutionary Flag*, E3/783, Sept-Oct 1972, p. 9, ERN (En) 00720210.

in some cases based on orders coming from the sector.[315] This process was further developed and, for example, as discussed more fully below, in March 1974, the town of Oudong was captured by the Khmer Rouge and an estimated 15,000 to 20,000 people were forcibly moved to rural areas and resettled in cooperatives.[316]

114. In parallel with the control of the economy a widespread system of bartering began, and the use of LON Nol regime currency was either partly restricted or prohibited altogether.[317] The CPK imposed increasingly difficult working conditions on members of cooperatives.[318] According to KAING Guek Eav *alias* Duch, who had created a cooperative at M-13B for suspects and those who had committed minor offences,[319] the CPK required those in cooperatives to work ten hours a day, seven days a week.[320]

115. The Chamber heard contrasting evidence regarding the purpose behind the creation of cooperatives. NUON Chea acknowledged that around 1972, the Standing

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[315] T. 12 November 2012 (PECHUY Chipse), pp. 86-87; T. 26 January 2012 (PRAK Yut), pp. 106-107; T. 21 May 2013 (PROM Sou), p. 8; T. 6 June 2012 (SAO Sarun), p. 8.

[316] T. 10 July 2013 (Stephen HEDER), pp. 86-87; T. 11 July 2013 (Stephen HEDER), p. 5; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 257, ERN (En) 00396465.

[317] T. 6 May 2013 (Phillip SHORT), pp. 99-100; *Revolutionary Flag*, E3/5, August 1975, p. 9, ERN (En) 00401484.

[318] T. 12 December 2012 (KHAM Phan *alias* PHAN Van), pp. 37-38 (cooperatives were established in Sector 105 well before the liberation of Phnom Penh where people ate communally and worked collectively); T. 17 July 2013 (Stephen HEDER), pp. 80-81 *referencing* Book by S. HEDER, *Cambodia Communism and the Vietnamese Model*, E3/22, p. 169, ERN 00393932, fn. 84 (the CPK became even more violent and repressive after mid-1973 by insisting on agricultural cooperatives in zones under its control, curtailing the practice of religion, and imposing restrictions on villagers' movements); T. 6 May 2013 (Philip SHORT), p. 18 (particularly after 1973, American intelligence material indicates that conditions were difficult in Khmer Rouge areas and people tried to flee); Book by D. CHANDLER: *A History of Cambodia*, E3/1686, 2000, p. 208, ERN (En) 00422836 (in early 1973, authorities in Phnom Penh were aware that the CPK introduced compulsory cooperatives in some areas which were rumoured to be uncompromising as insurgents herded villagers into the forest whenever a town or village was captured); BUN Loengchauy Interview Record, E3/5636, 19 August 2001, p. 11, ERN (En) 00711201 (from 1973, private property was transferred to collective ownership); Book by N. CHANDA: *Brother Enemy: The War after the War*, E3/2376, 1986, pp. 71-72, ERN (En) 00192256-57 (in mid-1973, private ownership of land and the use of money were abolished, agricultural cooperatives introduced and Vietnamese traders and fishermen were driven out of Cambodia. Those Vietnamese residents who remained in Cambodia were forced into cooperatives which, according to Sihanouk, were virtual concentration camps); Book by B. KIERNAN: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, 1985, p. 372, ERN (En) 00487492 (one peasant reported "We were forced to work very hard, and got nothing." The wearing of black clothing became compulsory, and the death penalty was commonly applied, particularly for evasion of the CPK draft).

[319] T. 19 March 2012 (KAING Guek Eav), p. 41, 49; T. 21 March 2012 (KAING Guek Eav), p. 15-16.

[320] T. 21 March 2012 (KAING Guek Eav), p. 14.

Committee decided to pool labour resources for rice-production.[321] He admitted that the population of Oudong had been evacuated in order to establish cooperatives with the purpose of cultivating food to counter food shortages.[322] Expert Philip SHORT also considered that the practical reason for collectivisation was to organise the production of rice and to prevent the Vietnamese from disturbing its supply.[323] More important, in his view, was the ideological rationale for collectivisation: it was a choice of communism over capitalism and an attempt to enforce equality for all citizens in levels of wealth.[324]

116. The Chamber is satisfied that prior to 1975 there existed a CPK policy to create cooperatives, which imposed difficult working conditions on cooperative members including those who had been forcibly moved there. As noted above, there was an economic as well as an ideological reason for the collectivisation policy.[325]

3.3.3. *Re-education of bad elements and killing of enemies*

117. There is evidence to suggest that the CPK established a further policy of re-education of "bad elements" and "smashing" those who had been found to be enemies.[326] From 1971 until June 1975, KAING Guek Eav was the head of M-13 which was tasked with receiving people who had been arrested from the battlefields.[327] Other security offices were established in this time period as well, such as the security office at Krang Ta Chan created in 1972.[328] In security centres, those who had been accused of being spies, or who were perceived as enemies, were interrogated and smashed.[329] To "smash" meant more than just to kill; it meant to arrest secretly, to interrogate and execute a person without the knowledge of family

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[321] T. 30 January 2012 (NUON Chea), pp. 3-6.
[322] T. 30 January 2012 (NUON Chea), p. 12.
[323] T. 6 May 2013 (Philip SHORT), p. 95.
[324] T. 6 May 2013 (Philip SHORT), pp. 28-30; *See also*, T. 11 April 2013 (François PONCHAUD), p. 14-16; T. 18 July 2012 (David CHANDLER), pp. 44-45.
[325] *See* Section 10: Movement of the Population (Phase One), para. 534.
[326] T. 20 March 2012 (KAING Guek Eav), p. 18; T. 21 March 2012 (KAING Guek Eav), p. 24; T. 29 March 2012 (KAING Guek Eav), p. 15; T. 2 April 2012 (KAING Guek Eav), p. 73; T. 9 April 2012 (KAING Guek Eav), pp. 4-5; *Revolutionary Flag*, E3/11, September 1977, p. 24, ERN (En) 00486235; *KAING Guek Eav* Trial Judgement, para. 99; T. 18 May 2009 (KAING Guek Eav), p. 15.
[327] T. 19 March 2012 (KAING Guek Eav), pp. 40-41; T. 20 March 2012 (KAING Guek Eav), p. 15.
[328] PHAN Chhen Interview Record, E3/72, 2 March 2010, ERN (En) 00490542.
[329] T. 19 March 2012 (KAING Guek Eav), pp. 41, 49; *Revolutionary Flag*, E3/5, August 1975, p. 8, ERN (En) 00401483 (elimination of government agents, spies and pacifist agents was also described as part of the outcome of the process of establishing cooperatives).

members.[330] Those who had been accused of being spies were enemies and were to be interrogated in security centres and smashed.[331] The way in which "enemy" was defined was tactical, remaining vague enough to allow various interpretations and to create an uncertain atmosphere.[332] However, the term was interpreted liberally and even Khmer Rouge cadre considered that innocents were falsely identified as enemies.[333]

118. The policy to smash enemies continued throughout the DK era though the policy evolved.[334] From 1970, spies, including CIA, KGB and Vietnamese ("Yuon"), were regarded as the key enemies.[335] Starting before 1975, former soldiers and

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[330] *KAING Guek Eav* Trial Judgement, para. 100; T. 18 May 2009 (KAING Guek Eav), p. 14; T. 24 October 2012 (LAY Bony), p. 40 (a former detainee at Trach Kraol Prison, explaining that the party would smash persons who tried to escape; they would be beheaded or executed); T. 11 January 2013 (CHHAOM Se), p. 104 (when he was in charge of a security centre, he received orders to execute prisoners); *See also,* T. 7 May 2013 (Philip SHORT), pp. 7-8 (to smash was to smash those who were not whole-heartedly with the revolution. Asking questions about the regime was a form of mental private property. If you had your own personal ideas which were different from those of the organisation (Angkar), this was a sign of being outside the revolution. Those with private views against the collective view were liable in the end to be smashed).

[331] T. 19 March 2012 (KAING Guek Eav), p. 41; *Revolutionary Flag*, E3/785, July 1973, ERN (En) 00713997, 00713999 (spies must be eliminated; "The stance to smash the spies is correct but it is inappropriately carried out"); T. 7 May 2013 (Philip SHORT), pp. 67-68 (the guiding principle was: Executing people is right when they are counter-revolutionary, when they are against the Revolution, but it must be done in a way which does not harm the Revolution's goals. For example, you do not execute people in front of others. Through the KR period, people disappeared, they were taken away and didn't come back.)

[332] T. 20 July 2012 (David CHANDLER), pp. 11-12 (opining that the definition of enemy was intentionally kept vague for its menacing effect and creation of an uncertain atmosphere); *Revolutionary Flag*, E3/11, September 1977, p. 24, ERN (En) 00486235(the CPK favoured a tactical approach to defining the enemy during the first phase of the Revolution and it was important to gather "all forces that could be gathered". Enemies were divided in three groups depending whether or not it was possible to win them over, to neutralise them, or to isolate them in order to be attacked).

[333] T. 19 March 2012 (KAING Guek Eav), p. 49 (stating that not all those who were sent to M-13 were in fact spies and he chose to release some of them); T. 20 March 2012 (KAING Guek Eav), pp. 19-20 (other groups were arrested without reason and sent to S-21, including Kong Socheat *alias* Soeun, son of Kong Sophal *alias* Keu, the chief of the regiment in 1975); T. 3 April 2012 (KAING Guek Eav), pp. 36-37 (members of the monarchy were also smashed between 1972 and 1973, including Prince Sirivudsara and his wife and Sisowath Pach).

[334] T. 21 March 2012 (KAING Guek Eav), p. 26; T. 18 July 2012 (David CHANDLER), pp. 22-24; T. 20 July 2012 (David CHANDLER), pp. 17-19, 129; T. 24 July 2012 (David CHANDLER), p. 57; *See also,* T. 7 May 2013 (Philip SHORT), p. 125 (enemies included all urban deportees); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 255, ERN (En) 00396455.

[335] T. 21 March 2012 (KAING Guek Eav), p. 26; T. 29 March 2012 (KAING Guek Eav), p. 15; T. 3 April 2012 (KAING Guek Eav), p. 36; T. 9 April 2012 (KAING Guek Eav), p. 4; T. 23 April 2013 (CHHOUK Rin), p. 34 (study session taught by POL Pot and NUON Chea discussed the elimination of the enemy that was burrowing from within including the KGB and CIA); T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 23-28 (IENG Sary identified American imperialists, CIA and KGB as the enemy); T. 11 July 2013 (Stephen HEDER), pp. 54-55; Article by S. HEDER: *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective*, E3/4527, p. 11, ERN (En) 00661465, fn. 57, 59; *Nuon Chea Speaks on*

officers of the LON Nol regime were also identified as the key enemies.[336] The Party also looked inward to find its enemies identifying those within the party who stood in the way of the "great leap forward", including soldiers, people in the North and Northwest Zones, and even members of the leadership.[337] For example, in 1974, Prasith, a member of the Central Committee from the Southwest and an ethnic Thai, was accused by Mok of working for the Bangkok government and the CIA.[338] He was taken to the forest and killed. The policy of re-education and killing of enemies was also linked to the policy of collectivisation, as the process of moving people to rural areas and the reorganisation of people's modes of life and production through the establishment of cooperatives helped Khmer Rouge cadres to ferret out and eliminate all those who were perceived to oppose the revolution, including government agents, spies and pacifist agents.[339] For example, Khmer who had previously studied in Vietnam and had returned to Cambodia to assist in the revolution were later suspected of being enemies, brought together and smashed.[340] Evidence concerning the nature

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Cambodian Army Anniversary (in FBIS Collection), E3/147, 17 January 1977, ERN (En) 00168467 (NUON Chea stating after 1961 it was the role of the secret defence units to defend the cadres and the people and to crush enemy intelligence agents).

[336] T. 21 March 2012 (KAING Guek Eav), p. 26; T. 2 May 2012 (PEAN Khean), p. 67 (Phnom Penh was evacuated to facilitate the cleaning of the enemies which were the LON Nol soldiers).

[337] T. 21 March 2012 (KAING Guek Eav), pp. 26, 41; T. 23 August 2012 (Civil Party EM Oeum), pp. 82-83 (this civil party attended several trainings where speakers, including POL Pot, NUON Chea and KHIEU Samphan, explained the meaning of the "great leap forward" which required moving to communism without going through socialism and insisting that those who could not make it would be considered to be the 'enemy'); T. 27 August 2012 (Civil Party EM Oeum), pp. 32-33 (This civil party further clarified that those who obstructed the party's affairs or did not perform well should be considered to be the 'enemy', adding that the Party expected any 'good element' to be able to distinguish a friend from an enemy without taking into account the fact that they may be a child, spouse or any other direct relative); T. 22 April 2013 (CHHOUK Rin), pp. 57-59 (according to this former Khmer Rouge soldier, many senior leaders of the Khmer Rouge army were arrested. They accused one another of being the enemy even though witness could not comprehend them being CIA or KGB agents); *cf.* T. 20 September 2012 (CHEA Say), p. 51 (those who did not work hard enough were re-educated, but not tortured); Document by KE Pauk: *Autobiography of Ke Pauk from 1949-1985*, E3/2782, undated, ERN (En) 00089713 ("Some soldiers served me since 1968, but they were accused of being CIAs.")

[338] T. 6 May 2013 (Philip SHORT), pp.19-20; *See also,* T. 7 May 2013 (Philip SHORT), pp. 76-77; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 259-260, ERN (En) 00396467-68 ("Prasith was not the first CPK cadre to be liquidated. Mok had already eliminated a number of lower-ranking officials […] This was the first time, however, that intra-Party conflict had reached into the ranks of the Central Committee. It was the first time, too, that the Party leadership had authorised the execution of one of its own number."); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 44-47 (recalling that Prasith did not attend the June 1974 Central Committee meeting and remarking this was not normal).

[339] *Revolutionary Flag*, E3/5, August 1975, p. 8, ERN (En) 00401483.

[340] T. 22 April 2013 (CHHOUK Rin), pp. 82-83 (Khmer who went to study in Hanoi during the Issarak regime and later returned to Cambodia in 1973 were targeted for arrests in Kampot. Several became Khmer Rouge, but the rest all disappeared); T. 19 July 2012 (David CHANDLER), p. 52 (700

and implementation of the policy of re-education of bad elements and killing of enemies, and its extent, will be the subject of Case 002/02.

3.3.4. *Targeting of Specific Groups – Cham, Vietnamese, Buddhists, and former officials of the Khmer Republic*

119. The Chamber notes that while a policy of targeting Cham, Buddhist and Vietnamese is alleged in the Closing Order[341], limited evidence has been heard to date on this policy. It will therefore be examined in detail in Case 002/02 and any subsequent trial.[342]

3.3.4.1. Targeting of Khmer Republic Soldiers and Officials

120. In the months leading to the final assault on Phnom Penh, the FUNK struck a conciliatory tone in radio broadcasts directed at Khmer Republic officials and soldiers, informing them that they could join the Khmer Rouge should they defect.[343]

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to 800 Hanoi Khmer returned to join the Cambodian revolution in 1970 many of whom were purged); T. 19 June 2013 (NOU Mao), pp. 31-34, 82 (Ta Mok told the witness that 2,000 or 3,000 Khmer-Viet Minh who had returned to Cambodia to help fight LON Nol forces were gathered up on orders from the upper echelon,disappeared and probably died); T. 10 July 2013 (Stephen HEDER), pp. 102-105; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, pp. 33-34, ERN (En) 00170724-25 ("We called those Khmers from Hanoi to come to study and someone led them away […] And so we were able to get rid of almost all of them. Very few realized what was happening in time and escaped to Vietnam"); Book by B. KIERNAN: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, 1985, pp. 372-373, ERN (En) 00487492-93 ("the Vietnamese asked the Khmers working with them [in Kampong Thom] if they wished to transfer to CPK units. Most volunteered to do so, but not long afterwards two of them returned with the news that the others had been executed because they allegedly had 'Vietnamese minds'").

[341] Closing Order, D427, 15 September 2010 ("Closing Order"), para. 205.

[342] Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014, p. 21; Annex, List of paragraphs and portions of the Closing Order relevant to Case 002/02, paras (2)(iv)(a), (b), and (c).

[343] *KHIEU Samphan Issues Statement on Current Situation* (in FBIS Collection), E3/118, 1 April 1975, ERN (En) 00166897-98 ("The NUFC, RGNUC and CPNLAF would like to appeal to all officers, men and members of armed organizations of all categories of the traitorous clique on all battlefields, including those around Phnom Penh and in some provinces under temporary enemy control, to lay down their weapons immediately and join the NUFC at once. Functionaries of all ranks are asked to immediately stop working for the seven traitors and join the NUFC. All brother soldiers and civilians who have been forced by the archantinational, archfascist and archrotten clique of traitors to serve them and the U.S. imperialists' aggressive war: Now the seven traitors have already forsaken you; you must follow the path of honor and national solidarity by joining the NUFC. The NUFC, RGNUC, CPNLAF and the Cambodian people in the entire liberated zone would like to appeal to you [word indistinct] and congratulate you for enduring and overcoming untold misfortune over the past 5 years. The NUFC and RGNUC have ordered all front organizations and all CPNLAF units to warmly welcome you."); *KHIEU Samphan Appeals to Phnom Penh Citizens to Join NUFC* (in FBIS Collection), E3/118, 14 April 1975, ERN (En) 00166948 ("[O]n behalf of the NUFC, headed by Chief

These messages were a calculated attempt to reduce opposition to the Khmer Rouge advance and lull the Khmer Republic officials into a false sense of security.[344]As he was perceived to be a moderate capable of unifying Khmer people from various sides, Khmer Rouge leaders called upon KHIEU Samphan to give deceptive assurances that once the CPK forces took control of the country, only the "seven supertraitors", including LON Nol and his inner leadership, would be executed.[345] The messages invited the Khmer Republic soldiers and civil servants to join the revolution, but warned implicitly that if they delayed in doing so, they would be in the same category as the supertraitors.[346] At the same time, cadre were taught at study sessions prior to the attack on Phnom Penh that the enemies of the Khmer Rouge were those who worked under the LON Nol regime and LON Nol soldiers.[347]

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of State Norodom Sihanouk, and on behalf of the RGNUC with Samdech Penn Nouth as prime minister, I make the following appeal to all brother countrymen, including Buddhist monks, laymen, soldiers, civilians in Phnom Penh and the few provincial capitals still under temporary enemy control: 1. All brother officers and troops in the traitorous army are requested to immediately lay down your weapons and join in the NUFC. The NUFC is proud to welcome you and is ready to greet you as brothers and compatriots."); *KHIEU Samphan Congratulates CPNLAF on Neak Luong Victories* (in FBIS Collection), E3/118, 3 April 1975, ERN (En) 00166925 (naming the seven members of the LON Nol regime as traitors: LON Nol, SIRIK Matak, SON Ngoc Thanh, CHENG Heng, IN Tam, LONG Boret, SOSTHENE Fernandez); *Sihanouk Addresses 22 March NUFC-CPNLAF Reception in Peking* (in FBIS Collection), E3/118, 31 March 1975, ERN (En) 00166907 (noting that Khmer Republic soldiers who surrender will be pardoned and granted amnesty by FUNK, GRUNK and the CPK forces, but that the seven supertraitors are to be hanged).

[344] T. 11 July 2013 (Stephen HEDER), pp. 68-69; Article by S. HEDER: *Pol Pot and Khieu Samphan*, E3/3169, 1991, p. 7, ERN (En) 00002752 ("In what appears to have been a calculated abuse of the trust in which he was held, Khieu Samphan actively helped just before the end of the war to set up Lon Nol military personnel and civil servants for easy execution. The esteem in which he was held meant that some of them allowed themselves to become sitting ducks for murder. Thus, as the Communist Party of Kampuchea advanced towards an all-out military victory during the first four months of 1975, Khieu Samphan twice signalled those who had been fighting against it that only the seven top leaders among them would be executed upon defeat.").

[345] *KHIEU Samphan Chairs NUFC Congress Session; Communique Issued* (in FBIS Collection), E3/117, 26 February 1975, ERN (En) 00166772 ("Concerning the seven traitors in Phnom Penh […] On behalf of the NUFC, RGNUC and CPNLAF, the national congress declares it absolutely necessary to kill these seven traitors for their treason against the nation. […] The Cambodian nation and people, the NUFC and RGNUC will welcome and duly reward those army officers, troops, militiamen, policemen, functionaries, politicians and high dignitaries in the areas under temporary enemy control who dare to oppose the traitors, fight them and turn their weapons on them."); T. 8 May 2013, p. 35 (Philip SHORT); *AKI Reports Sihanouk's 26 Mar War Criminals Statement* (in FBIS Collection), E3/118, 1 April 1975, ERN (En) 00166896 ("Though not sentenced to death […], the other supertraitors such as [list of Khmer Republic officials] are no less true war criminals who, following the liberation of Phnom Penh, will have to answer before state justice for their innumerable evil deeds and terrible crimes […].").

[346] T. 9 May 2013, pp. 3-5 (Philip SHORT).

[347] T. 11 January 2013 (CHHAOM Se), pp. 52-55, 60-61.

121. There is consistent evidence of a radicalisation of the policy regarding captured Khmer Republic soldiers and officials from 1970 until 1975. Initially, there was a distinction made between LON Nol soldiers and "agents." Soldiers were often re-educated and forgiven[348] whereas agents were usually executed.[349] This distinction may have been difficult to put into effect as one refugee, likely a former party member, noted, "We did not know who was a Lon Nol officer or who was a CIA agent. So we were afraid that our enemy might rise up again."[350] But around 1972 or 1973, Khmer Republic soldiers were less likely to be forgiven and more likely to be executed if captured by CPK forces.[351] American bombings, which lasted until mid-1973, had made people very angry and suspicious of outsiders, some of whom were accused of being agents from LON Nol camps and executed.[352] For example, a former LON Nol soldier stated, "In 1972 there were lots of Lon Nol soldiers captured, about 500 of them. All were executed, none were forgiven."[353]

122. There was some evidence of the uneven application of this policy. This can be attributed to two factors. First, there was no initial written directive on the targeting of

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[348] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980 ERN (En) 00170716 ("Most Lon Nol soldiers were reeducated for a short time and told not to rejoin the Lon Nol army and then released." ERN (En) 00170732 ("most POW's were forgiven while most agents were executed.") ERN (En) 00170741-42 ("Also there were cases of capture of LON Nol soldiers, some were forgiven, some were not. But in the case of agents, none were ever forgiven, but they were sent to higher levels for execution" ERN (En) ,

[349] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170716,

[350] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170728.

[351] *See e.g.* KHIEU Samphan, HOU Yun and HU Nim Statement, E3/637, 17 April 1975 ERN (En) 00740933 ("according to an interim report, some 1,550 heads of enemy's military personnel and officers including hundreds colonels, captains, lieutenants and major-lieutenants have been smashed, while ten thousands of people have been liberated"); ERN (En) 00740938 ("All in all, up to mid-January 1973, the Kampuchean people's liberation armed forces and our people have obtained great victories. We have smashed a total of 10,245 heads of the enemies and liberated dozens of bases, Mekong River and tens of thousands of people, and confiscated thousands of rifles and the enemies have become hot-blooded and more panic-stricken. They have run out of strength, bases, territories, people, food-supply, gasoline and particularly means of transport including both land transport and waterway").

[352] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170741-42; Book by B. KIERNAN: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, 1985, ERN (En) 00487493 (after a change in leadership and the increase in American bombing in 1973, there were large-scale executions of all captured Lon Nol troops and militia, and also of traders").

[353] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170758 (statement made by a refugee and former LON Nol Soldier who defected in 1974 to the liberated zones where his relatives vouched for his loyalty).

Khmer Republic soldiers and officials.[354] Despite the lack of a written policy, it was Philip SHORT's view that that the uniformity of the treatment of Khmer Republic soldiers indicates that such a policy must have existed.[355] Second, the evidence concerning the CPK treatment of former soldiers or officials of the Khmer Republic prior to 1975 within the liberated zone arises mainly from post-1979 interviews of refugees outside of Cambodia, many of whom were former Khmer Rouge cadre who would have an incentive to minimise evidence of mistreatment. Nonetheless, even these accounts support the conclusion that there was an increasing use of revolutionary violence.[356]

123. The radicalisation of CPK policy targeting groups of individuals considered to be enemies such as former Khmer Republic soldiers or officials is also consistent with the Party's increasing use of revolutionary violence against enemies both internal and external, including, as noted above, former Central Committee member Prasith and so-called Hanoi Khmer who had studied in Vietnam.[357] If violence was now appropriate for internal enemies, it would also be required against external enemies.

3.3.4.2. The "Experience" of Oudong

124. The CPK's merciless policy is cogently illustrated by the execution of Khmer Republic soldiers following the evacuation of the town of Oudong. On 18 March 1974, CPK forces under the overall charge of Ta Mok and ultimately the head of the Special Zone, SON Sen,[358] captured the town of Oudong.[359] Based on interviews with

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[354] T. 8 May 2013 (Philip SHORT), pp. 100-102 (Because there was not written directive setting forth the policy of extermination, the policy was not absolutely uniform and not every LON Nol soldier was killed."); *cf.* Section 14: Joint Criminal Enterprise, paras 814-818 (noting later directives to kill Khmer Republic officials).

[355] T. 8 May 2013 (Philip SHORT), pp. 100-102.

[356] *See e.g.* Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170732 (PHAK Lim who is described as one of the top leaders of KR refugees and likely a member of the CPK states, "At that time [around 1974] if we have captured anyone in the area in which I was fighting he would have been sent to the Special Region, not to the Southwest Region. This was the case for example with POW's and agents. At that time agents were considered more vicious than POW's., most POW's were forgiven while most agents were executed."); Book by B. KIERNAN: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, 1985, ERN (En) 00487493 ("the increased bombing, however, were following in 1973 by large-scale executions of 'all' captured Lon Nol troops and militia, and also of traders, the district chief reports.")

[357] *See* Section 3: Historical Background, paras 117-118.

[358] T. 3 October 2012 (MEAS Voeun), p. 111; T. 9 January 2013 (UNG Ren), p. 38.

[359] T. 10 July 2013 (Stephen HEDER), pp. 86-87; T. 11 July 2013 (Stephen HEDER), p. 5; T. 19 June

several villagers and other sources, Expert Philip SHORT reported that several thousand, "[o]fficials and uniformed soldiers were separated from the rest, led away and killed."[360] Two witnesses also confirmed that after the fall of Oudong many people, including children were first sent to M-13, where some were interrogated, and later to Battambang Province.[361] Witness Stephen HEDER visited Oudong around 19 March 1974 and interviewed some of the few remaining inhabitants who told him about mass executions of some categories of people including Buddhist nuns by Khmer Rouge troops entering Oudong.[362] Although he did not recall seeing the bodies of Khmer Republic military personnel or hearing specific reports of such executions, he personally saw half a dozen bodies of Buddhist nuns on a hillside near a Pagoda.[363]

125. Witness NOU Mao testified that he attended a commune committee meeting after the evacuation and was told that Khmer Republic soldiers had been defeated at Oudong and the population 'evacuated' to the Trapeang Treunh village.[364] He was told that evacuees died due to starvation and disease, but there was no acknowledgement that soldiers were executed.[365] One month later however in a speech given in North Korea, KHIEU Samphan gave a clear indication of what had happened and who had been targeted: "On 18 March, our People's National Liberation Armed Forces liberated another city, Oudong, by annihilating all the puppet soldiers there along with their reinforcements; in other words over 5,000 enemies were eliminated, 1,500 of whom were captured."[366] He did not specify

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2013 (NOU Mao), pp. 6, 41-43; *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 19 ERN (En) 00491424; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 25-26; T. 20 March 2012 (KAING Guek Eav), p. 13; The testimony of NY Khan, SON Sen's brother, was ambivalent on this issue. He testified that Oudong had never been evacuated, but also responded that people were evacuated for security reasons because of the fear of aerial bombings. *See* T. 28 May 2012 (NY Khan) pp. 22-23. Due to the contradictions in his testimony, the Chamber does not find this witness to be reliable on the subject of the 1974 evacuation of Oudong.

[360] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 255, ERN (En) 00396455; T. 7 May 2013 (Philip SHORT), p. 73; T. 19 June 2013 (NOU Mao), pp. 6, 41-43.

[361] T. 7 April 2009 (KAING Guek Eav *alias* Duch), Case 001, p. 31; T. 9 April 2009 (UCH Sorn), Case 001, pp. 104-105 (many children were sent to M-13 when Oudong was defeated).

[362] T. 10 July 2013 (Stephen HEDER), pp. 86-87; T. 11 July 2013 (Stephen HEDER), p. 5.

[363] T. 10 July 2013 (Stephen HEDER), pp. 86-87.

[364] T. 19 June 2013 (NOU Mao), p. 42.

[365] T. 19 June 2013 (NOU Mao), pp. 41-42.

[366] FUNK Publication: *Nouvelles du Cambodge No.698*, E3/167, 11 April 1974, ERN (En) 00280586; *See also*, Document by KE Pauk: *Autobiography of Ke Pauk from 1949-1985*, E3/2782, undated, ERN (En) 0089711 (stating that after recapturing Oudong from Khmer Republic Division 80, CPK forces "annihilated the enemies and confiscated tanks, artilleries and thousands of tons of ammunition"); T. 11 July 2013 (Stephen HEDER) p. 55 (on the origins of E3/2782).

whether the enemies who were annihilated had been killed during the fighting or instead after they had been captured and disarmed.

126. In "Nouvelles du Cambodge" the official publication of the FUNK, dated April 1974 the capture of Oudong was described somewhat differently: "On 18 March 1974 Oudong was totally liberated. An enemy division was totally wiped out and 30,000 inhabitants of that town and surrounding areas successfully crossed over the liberated zone. It is only after the FAPLNK had totally destroyed the military positions, the administrative power, detention camps, the pacification centres at Oudong that the traitors rushed reinforcement troops. But they too were totally trounced and decimated in great numbers."[367]

127. Based on the foregoing, the Chamber is satisfied that a CPK policy targeting soldiers and officials of the Khmer Republic existed prior to 1975. There were some variations in this policy depending on circumstances and locations.[368] But with the escalation of the war in Cambodia and the power exercised by the CPK on cadres within their control increasing, this policy which was initially relatively lenient, became more radical and in several instances there were mass killings of Khmer Republic soldiers after their capture. The policy as effected was in marked contrast with the official policy disseminated by the FUNK once the country was under CPK control promising the death penalty only for the 'seven super-traitors'. Furthermore the Chamber finds that Khmer Republic soldiers, likely numbering in the thousands, were executed en masse immediately after the seizure of Oudong, the CPK leadership was aware of the event, and, as noted below, discussed it during the Central Committee meeting held in June 1974.[369]

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[367] FUNK Publication, E3/114, ERN (En) 00280556-57 ; *See also,* Khieu Samphan Appeals for Intensified Struggle 15 March (FBIS Collection of March 1975), 15 March 1975, ERN (En) 00166827 ("We liberated Oudong and several important townships […] In brief, the enemy is in agony everywhere. The enemy troops are demoralized, desperate and being routed everywhere […] the enemy forces can clearly see that if they accept orders to carry on the fighting against us they will die.")

[368] T. 8 May 2013 (Philip SHORT), pp. 100-102.

[369] *See* Section 3: Historical Background, paras 132-152.

3.3.5. ***The Regulation of Marriage***

128. The Closing Order states that prior to 1975,[370] and thereafter, the CPK arranged marriages and encouraged procreation in order to increase the population of Democratic Kampuchea.[371] The Chamber heard some evidence concerning arranged and involuntary marriages, including that those who did not agree were sometimes beaten, raped or killed.[372] There were also instances where couples wed by *Angkar* (literally 'organisation') were put under surveillance in order to enforce procreation.[373]

129. According to others, marriages were arranged by *Angkar*, but not forced. These witnesses asserted that *Angkar* took the place of the parents and in Cambodian

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[370] Closing Order para. 1447.

[371] T. 24 April 2013 (CHUON Thi), pp. 21-22 (Cambodia had much land and it was said that the country needed 20 to 30 million people in order to defend the territory); T. 7 May 2013 (Philip SHORT), pp. 9-10 (marriages were often between soldiers and young women for the practical purpose of creating children); T. 9 May 2013 (Philip SHORT), p. 118 (The policy was to create as big a population as possible. Forced marriages and insistence that married couples should produce children was consistent with this policy.); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 325-326, ERN (En) 00396533-34 ("Free choice of spouses' was explicitly condemned. To underline the social aspect, weddings were celebrated collectively for a minimum of 10 couples. After a marriage had been consummated the couple often lived apart."); Thirty-Second Session of the United Nations General Assembly (statement of IENG Sary), E3/1586, 11 October 1977, at ERN (En) 00079815 (DK requires a population of 15 to 20 million in 10 years' time); CPK Central Committee Discussion with Belgium-Cambodian Delegation, E3/5715, 5 August 1978, ERN (En) 00574566 (The Communist Party of Kampuchea and the Government of Democratic Kampuchea plan to increase the number of its population from 15 to 20 million within 10 to 15 years); Reuter's News Report, E3/1591, 2 November 1979, ERN (En) 00015914 (IENG Thirith states the population increased between 1975-1979 as many babies were born and are being fed plentifully); CPK Youth Publication: Revolutionary and Non-Revolutionary World News Regarding the Matter of Family Building, E3/775, 2 September 1975, ERN (En) 00417940-47; *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495808 (to increase agricultural production, there must be a rapid increase in population); *Revolutionary Flag*, December 1976 January 1977, E3/25 ERN (En) 00491435 ("We need from 15 to 20 million people to meet the needs of our land"); *Revolutionary Flag*, E3/11, September 1977, ERN (En) 00486262 (we need to increase our Kampuchean population to 15 to 20 million over the next 10 years); NOB Kan Civil Party Application, E3/4884, ERN (En) 00891261 (told to deliver babies for Angkar).

[372] T. 30 May 2013 (PO Dina), pp. 104-105 (civil party forced to marry someone after her husband died and she was beaten and imprisoned when she refused); Civil Party Application of KES Khan, E3/5008, ERN (En) 00891040-41 (fearing she would be summoned for re-education or killed, Civil Party married person chosen by Angkar and to have babies; militiamen spied on them on their wedding night); Civil Party Application of PEN Sokchan, E3/4779, ERN (En) 00891280 (16 year-old forced to marry, assaulted and raped when she refused to have sex with her husband as militiamen watched);

[373] Civil Party Application of PEOM Nen, E3/5044, ERN (En) 00891047 ("The next morning, he reported to the Youth Chief, SAU Vân, the fact that l had not agreed to sleep with him. After the report, the Unit Chief called me for instruction and warned me l would be executed if l did not sleep with my husband,"); Civil Party Application of MANN You Suh, E3/4745, ERN 00855588 (militiamen monitoring a forcibly married couple saw they did not "get along" and took them away to be killed.); Civil Party Application of SMAN Chhavy, E3/5066, ERN (En) 00890594 (Angkar followed a couple and found that neither got along well so she was sent to be re-educated.).

tradition the parents arrange the marriage for children, although a few witnesses had a different understanding.[374] KHIEU Samphan claimed not to know anything about forced marriage and, according to him, no such event took place in Phnom Penh.[375]

130. There is however, some evidence of arranged and involuntary marriages. The Chamber is therefore able to find that regulation of marriage was a CPK policy. Evidence concerning the nature and implementation of the policy of regulation of marriage, and its extent will be the subject of Case 002/02.

131. Having examined the existence of the CPK policies that are relevant to Case 002/01, the Chamber now considers the events immediately preceding the 17 April 1975 evacuation of Phnom Penh.

3.4. Decision to 'Liberate' and Forcibly Evacuate Phnom Penh and Other Urban Centres

132. The Trial Chamber is satisfied that the CPK Central Committee over a series of meetings starting in 1973, decided collectively to forcibly evacuate Phnom Penh's inhabitants.[376]

3.4.1. *June 1974*

133. In June 1974, the CPK leaders met in Meak village, Prek Kok commune near the bank of the Mekong River for more than a fortnight to discuss plans for the final assault and liberation of Phnom Penh and other urban centres.[377] By his own

[374] T. 10 April 2013 (François PONCHAUD), pp. 73-74; T. 24 April 2013 (CHUON Thi), pp. 21-22, 81 (marriage was not forced, but it was arranged in respective units, and had to be approved by Angkar); T. 8 October 2012 (MEAS Voeun), p. 64 (marriage was regulated but couple must first meet and consent); T. 25 September 2012 (NOEM Sem), pp. 28-29, 32-33, 76-77 (marriage of cadre was arranged by superiors and she consented to it); T. 4 June 2012 (SAKIM Lamut), p. 72 (marriages arranged but not forced); T. 19 June 2012 (YUN Kim), pp. 59-60 (marriages arranged but women's consent first sought); *cf.* T. 7 December 2011 (ROMAM Yun), pp. 45-46 (during the POL Pot time, people did not get married; they just live together); *cf.* T. 21 June 2012 (KHIEV Nou), p. 66 (superiors in the commune must agree to the marriage, but they were merely informed they would be married).

[375] T. 27 Mary 2013 (KHIEU Samphan), p. 84.

[376] T. 13 December 2011 (NUON Chea), pp. 26-29; T. 30 January 2012 (NUON Chea), pp. 14-17. Although NUON Chea indicated that the meetings on this topic started in 1973, the Chamber was only presented with detailed evidence of meetings starting in June 1974.

[377] *Revolutionary Flag*, E3/11, September 1977, p. 36, ERN (En) 00486247; *Revolutionary Flag*, E3/747, August 1978, p. 20, ERN (En) 00499785; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 39; T. 22 November 2011 (NUON Chea), pp. 103-104, 108, 110; T. 14 December 2011

admission, NUON Chea attended the meeting and participated in the decision to evacuate the cities.[378] Other attendees included POL Pot, SAO Phim, KOY Thuon, Ta Mok, VORN Vet, ROS Nhim, and SON Sen.[379] Those attending the June 1974 meeting endorsed the evacuation of Phnom Penh.[380]

134. Although IENG Sary claimed he did not attend the June 1974 meeting, a claim supported by NUON Chea[381], he admitted in an interview with Stephen HEDER that he had discussed the evacuation of Phnom Penh with POL Pot upon his return from China. Based on the timing of this discussion, and the testimony of PHY Phuon placing IENG Sary at the June 1974 meeting, the Chamber is satisfied that this conversation occurred around the same time as, if not during, the June 1974 Central Committee Meeting. With the prompting of the Chinese leadership, IENG Sary asked POL Pot what plans were in place following the liberation of Phnom Penh for its three million inhabitants. POL Pot told IENG Sary that "they already had all the experience they needed […] [I]t was a very easy matter to resolve […] because we Khmer had clear-cut notions in this regard after having been able to solve the problem in Stung Treng and Kracheh [Kratie] provinces. So the solution to the problem was to evacuate."[382] The events at Oudong were also discussed extensively and, according to Philip SHORT, "it was the success [of] what happened at Oudong, which convinced the leadership that this was the way they should go with Phnom Penh […]"[383] Despite POL Pot's representation to the international community that the plan to evacuate Phnom Penh was not "pre-established," it is clear that the matter was in fact discussed

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(NUON Chea), p. 2; Based on his interviews with Phy Phuon, Philip SHORT initially placed this meeting in September 1974, but later testified that he now believed it took place in June 1974. *See* Book by P. SHORT: *POL Pot: The History of a Nightmare*, E3/9, 2004, p. 256, ERN (En) 00396456; T. 9 May 2013 (Philip SHORT), pp. 73-75, 129-132.

[378] T. 13 December 2011 (NUON Chea), pp. 26-29; T. 30 January 2012 (NUON Chea), pp. 14-17; T. 26 July 2012 (ROCHEOM Ton *alias* PHY Phuon), pp. 10-11, 39, 43-44; *See* Section 3: Historical Background, para. 133.

[379] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 10-11, 39, 43-44.

[380] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 16, 23-25.

[381] T. 14 December 2011 (NUON Chea), pp. 2-4.

[382] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 5-6, ERN (En) 00417603-04 (Although the matter of whether it would be a full evacuation or a partial evacuation of only the peasants was not determinatively resolved).

[383] T. 7 May 2013 (Philip Short), pp. 79-80.

at Central Committee meetings starting in June 1974 and a plan was put in motion to liberate and then evacuate Phnom Penh.[384]

135. There were conflicting accounts as to whether KHIEU Samphan attended the meeting at which the decision to evacuate Phnom Penh was made. KHIEU Samphan asserts that he did not participate and that he was not in Cambodia at the time of the meeting.[385] NUON Chea supports this rendition of events, stating that KHIEU Samphan was not present at the meeting and therefore he did not know of the decisions taken.[386] According to PHY Phuon, however, KHIEU Samphan was at the June 1974 meeting in Meak and agreed with the plan to evacuate the city.[387]

136. Although KHIEU Samphan, along with IENG Sary, visited multiple countries from March to May 1974 in a tour of Africa, Europe, and Asia in his capacity as FUNK Deputy Prime Minister,[388] he returned to Cambodia in June 1974 when the meeting occurred.[389] Several news articles report on KHIEU Samphan's visits to foreign countries in April and May 1974, including China and Vietnam. Two articles, one quoting KHIEU Samphan's speech, indicate his presence in Laos in June 1974.[390]

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[384] *Interview with Comrade POL Pot* (News from Kampuchea), E3/1583, 1 May 1978, ERN (En) 00011316-00011317; French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, ERN (En) 00751831-32; *POL Pot's Press Conference in Peking* (in SWB Collection), E3/2728, 4 October 1977, ERN (En) 00390927; *Cambodian Offers Evacuation Motive* (New York Times), E3/2316, 5 October 1977; The Chamber notes the term "liberate" was used by the Khmer Rouge themselves to describe overcoming Khmer Republic forces, capturing areas held by them, and bringing people under their own control. The proper characterisation of these events is addressed in the judgement but the Chamber does not endorse the meaning indicated by Khmer Rouge usage of this term.

[385] T. 31 October 2013 (KHIEU Samphan), p. 69; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, para. 32.

[386] T. 14 December 2011 (NUON Chea), pp. 2-4.

[387] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 16, 44.

[388] US State Department Telegram, Subject: KHIEU Samphan Visit to the PRC, E3/2939, 27 May 1974, para. 1, ERN (En) 00377050 (issued at the conclusion of KHIEU Samphan's visit to the PRC on 27 May); U.S. State Department Telegram, Subject: KHIEU Samphan's Visit, E3/3315, May 1974, para. 4, ERN (En) 00412755 (KHIEU Samphan to leave Romania for Algiers on 2 May); *KHIEU Samphan Greets DPRK Armed Forces Minister* (in FBIS Collection), E3/488, 12 February 1975, ERN (En) 00166753 (KHIEU Samphan recalling official visit to DPRK in April 1974); Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 23, ERN (En) 00524007; SUONG Sikoeun Book manuscript, E3/40, ERN (Fr) 0078987.

[389] T. 10 June 2013 (SOE Socheat), p. 69-70; T. 2 August 2012 (SUONG Sikoeun), pp. 89-91 (KHIEU Samphan and IENG Sary were in Vietnam starting in May 1974 for at least one week before returning to Cambodia).

[390] Summary of World Broadcasts, E3/1379, 5-7 October 1977, ERN (En) 00419557 (summary report of an editorial notes of a June 1974 visit of KHIEU Samphan to Lao liberated area); *KHIEU Samphan Greets LPLA on 26th Anniversary* (in FBIS Collection), E3/30, 20 January 1975, ERN (En) 00166713 (referring to goodwill visit to the Lao liberated zone in June 1974).

These reports do not indicate the precise date or the duration of KHIEU Samphan's visit. However, a contemporaneous Australian Embassy Cable indicates that an Australian delegation's visit to Laos was postponed because KHIEU Samphan had spent the week of 2-8 June in Sam Neua, Laos.[391]

137. This is consistent with the detailed testimony and memoire of SUONG Sikoeun. SUONG travelled from Beijing to Hanoi with IENG Sary and KHIEU Samphan on 25 May 1974, SUONG's wife's birthday.[392] After staying one week in Hanoi,[393] they travelled to Laos for two days before KHIEU Samphan and IENG Sary returned to the liberated zone in Cambodia along the HO Chi Minh trail.[394] SUONG stated that the two had to return to Cambodia because the war between FUNK/GRUNK and Marshall LON Nol had intensified and as leaders of the Resistance Movement, KHIEU Samphan and IENG Sary were obliged to join the Resistance in the country.[395] The Chamber is therefore satisfied that KHIEU Samphan was in Laos in the first week of June 1974 before returning to the liberated zone in Cambodia with IENG Sary.

138. The official visit to China, noted above, was particularly significant. During it, KHIEU Samphan secured for the first time since the January 1973 Paris Peace Agreement between the North Vietnam Republic and the U.S., a publicly-announced agreement whereby China would provide military equipment and supplies to the CPK forces.[396] The visit was also significant for the open support and encouragement

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[391] Australian Embassy Telegram, Subject: More Information from Australian Ambassador's Visit to Pathet Lao Headquarters in Sam Neua, E282.1.14, 19 June 1974, ERN (En) 00899053. The Chamber notes that it has denied the Co-Prosecutors' request, opposed by the KHIEU Samphan Defence, to put this document before the Chamber because the Co-Prosecutors failed to exercised due-diligence in obtaining the cable prior to trial (E282/2/1/2, para. 4). However, the Chamber now considers it in the interests of justice to put before it E282.1.14 insofar as it partially supports the alibi put forward by the KHIEU Samphan Defence (*See* E190, paras 19-21).

[392] Suong Sikoeun Book manuscript, E3/40, ERN (Fr) 00078987; T. 2 August 2012 (SUONG Sikoeun), p. 90.

[393] T. 2 August 2012 (SUONG Sikoeun), p. 90.

[394] T. 2 August 2012 (SUONG Sikoeun), pp. 89-91; SUONG Sikoeun Book manuscript, E3/40, ERN (Fr) 00078987, 00078989, 00078992; *See also*, Laurence PICQ Interview Record, E3/353, 29 October 2008, ERN (En) 00323626 (SUONG Sikoeun went on many official trips with IENG Sary and NORODOM Sihanouk. SUONG left Beijing for Cambodia in May 1974); My Life under IENG Sary: Crying against the shame and horror (Phnom Penh Post), E3/2381, 4-17 October 1996, ERN (En) (00189076) (Sikoeun left for the resistance in 1974).

[395] T. 2 August 2012 (SUONG Sikoeun), p. 91

[396] U.S. State Department Telegram, Subject: KHIEU Samphan Visit to the PRC, E3/2939, 27 May 1974, para. 1, ERN (En) 00377050 (describing the first openly announced military agreement since the

offered by the senior leadership in China to the CPK leadership in its battle against the Khmer Republic and its U.S. supporters.[397] KHIEU Samphan and IENG Sary's visits around the same time to the liberated zone in Laos and to Vietnam were equally important given the level of official recognition they received and the issues concerning military and political cooperation discussed with the highest authorities of these countries.[398] Considering its geographic location between China and Cambodia, Vietnam had the ability to facilitate arms transfers from China to the CPK, or in the alternative, to block them.[399] Therefore, the visit to Vietnam was crucial to the fate of the on-going fight in Cambodia. The Chamber considers it very likely that the June 1974 meeting was scheduled to enable KHIEU Samphan and IENG Sary to attend and report to the members of the CPK Central Committee on the highly successful meetings with senior Chinese, Vietnamese and Laotian leaders.

139. SO Socheat, KHIEU Samphan's wife, places KHIEU Samphan's return to Cambodia from abroad either in June or July 1974. But given the contradictions in her testimony, her motivation to assist her husband, the clear testimony of PHY Phuon and the equally clear information provided by SUONG Sikoeun, the Chamber finds that SO Socheat's evidence is unreliable. She first testified that KHIEU Samphan was

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Paris Peace Agreement and the gratis provision of military equipment and supplies); CPK Media Report, E3/113 (stating that military solidarity between China and Cambodia had been strengthened and consolidated); CPK Media Report, E3/1254 (describing KHIEU Samphan's discussions with Chinese representatives following which KHIEU Samphan affirmed the solidarity in combat between the two peoples and the two armies); Section 3: Historical Background, fn. 451.

[397] US State Department Telegram, Subject: KHIEU Samphan Visit to the PRC, E3/2939, 27 May 1974, para. 1, ERN (En) 00377050 ("the Chinese accorded Samphan and his delegation honors normally reserved for a Head of State. In addition to meetings with MAO, Premier CHOU and Vice Premier TENG, CHIANG Ching's personal invitation […] also provided the Leftists'seal of approval. Throughout the occasion, Sihanouk found himself relegated to [a] role similar to that of an extra. The visit, in fact, seemed to indicate Peking's abandonment of the Prince as its main card in Cambodian affairs.")

[398] *KHIEU Samphan Greets LPLA on 26th Anniversary* (in FBIS Collection), E3/30, 20 January 1975, ERN (En) 00166713 (KHIEU Samphan referring to "militant solidarity and fraternal friendship" expressed during June 1974 visit to Lao liberated zone); FUNK Publication: Nouvelles du Cambodge No. 691, E3/1238, 2 April 1974, ERN (En) 00278740 (describing 31 March 1974 visit of FUNK/GRUNK delegation to Hanoi, represented by Mr. KHIEU Samphan, Deputy Prime Minister, Minister of National Defence of GRUNK and Commander-in-Chief of FAPLNK; Mr. IENG Sary, Special Advisor to the Deputy Presidency of the GRUNK Council; IENG Thirith; Mr. TIV 01 and Mr. SIEN An).

[399] T. 13 December 2011 (NUON Chea), pp. 19-20 (between 1968 and 1975, China supplied some arms, but Vietnam was responsible for transporting them and retained one third of the shipments); T. 13 December 2011 (NUON Chea), pp. 28-29 (after the June 1974 meeting, China provided 13 truckloads of weapons to CPK forces which were transported through Vietnam. The weapons were destroyed by an American bombing raid before the CPK forces could put them to use).

not with her when she gave birth to her child on 6 June 1974 and that he returned from China only one month later. However, she then stated that KHIEU Samphan was in Cambodia with her in June 1974, asserting that he stayed with her at K-17 and B-20 and went to Meak village only when Phnom Penh was close to being liberated.[400] After the birth of her first child, she said that KHIEU Samphan stayed by her side for about one month to assist her.[401] However she had also mentioned previously that she went to Meak's office in the early days after the birth of this child.[402] She again contradicted herself, saying first that KHIEU Samphan had stayed with her for four or five months, then correcting herself to state it was three months.[403] In addition to these contradictions, and the implausibility of some aspects of her testimony,[404] the Chamber views SO Socheat's testimony in the light of her desire to assist her husband and to absolve him of culpability for the criminal conduct for which he is charged.

140. While SO Socheat's statements concerning the date of KHIEU Samphan's travel to Meak village are contradictory, she has confirmed that KHIEU Samphan did in fact travel there. The Chamber further notes that Meak village was located in Kampong Cham very near to B-20[405] and travel between these places was feasible. Therefore the Chamber does not find that her testimony raises a reasonable doubt as to KHIEU Samphan's presence in Meak village in June 1974.

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400 T. 10 June 2013 (SO Socheat), pp. 69-70.
401 T. 10 June 2013 (SO Socheat), pp. 61-62.
402 T. 10 June 2013 (SO Socheat), pp. 63, 69-70.
403 T. 10 June 2013 (SO Socheat), pp. 69-70; T. 11 June 2013 (SO Socheat), p. 80.
404 Ms. SO Socheat's testimony was also implausible in many respects. She stated that it was only after she arrived in Phnom Penh (more than one week after 17 April) that she realised that the city had been 'evacuated'. T. 11 June 2013, p. 19. She also stated that during NORODOM Sihanouk's visit to the liberated zone in 1973, she was not aware that her husband was officially in charge of welcoming the prince. T. 11 June 2013, pp. 15-16. Neither assertion is credible.
405 SUONG Sikoeun Book manuscript, E3/40, ERN (Fr) 00078996 (there were many CPK camps in the area of Stung Trang, Kampong Cham province, including B-20, a re-education camp for intellectuals returning from abroad, which was about 10 kilometres away); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 28 ("S-24 was […] near Phum [village] Meak, near the Dei Kraham area, which was situated close to the district town of Stueng Trang"); T. 13 June 2012 (OEUN Tan), pp. 28-29 (former Khmer Rouge guard who joined the Khmer Rouge in 1968 when he was in Rattanakiri and who moved with Pang and POL Pot from Rattanakiri to Kampong Cham province in 1970. IENG Sary, NUON Chea, KHIEU Samphan attended meetings chaired by POL Pot from 1970-1975 at Trapeang Thum village, Kampong Cham); KHAM Phan *alias* PHAN Van Interview Record, E3/58, 21 November 2008, ERN (En) 00250087-88 (B-20 was next to kilometre 10, Boeng Kêt, in Stung Trang district, Kampong Cham province); *See also*, Book by P. SHORT: *POL Pot: The History of a Nightmare*, E3/9, 2004, ERN (En) 00396191 (map).

141. After the June 1974 meeting, everyone was instructed to disseminate information about the conclusions reached at the meeting in their respective zone of competence.[406] A committee chaired by SON Sen and including KOY Thuon and other zone members was established to manage the evacuationof Phnom Penh.[407] POL Pot and NUON Chea led a delegation to Vietnam to inform the Vietnamese leaders of the CPK plan to 'liberate' Phnom Penh and to request further supplies of weapons.[408]

142. Considering all of the above circumstances, the Chamber is satisfied that both KHIEU Samphan and IENG Sary were present at the June 1974 meeting at which the decision was made to evacuate Phnom Penh. Pursuant to the principle of democratic centralism, both acceded to the decision.[409] KHIEU Samphan could have opposed the evacuation of Phnom Penh, but chose not to.[410]

3.4.2. ***February 1975***

143. There was evidence to suggest that the evacuation of Phnom Penh was again discussed within the CPK in February 1975. Although Expert David CHANDLER recognised that opinions differ about this date,[411] it was his view that the decision to evacuate the cities was made in February 1975,[412] by which time the inhabitants of several smaller towns including Oudong and Kratie had already been forcibly transferred and the policy had been tested.[413] In an interview given at a press conference in Beijing in IENG Sary's presence POL Pot also stated that the decision to evacuate city residents to the countryside was one of the major factors for the

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[406] T. 14 December 2011 (NUON Chea), pp. 2-4.

[407] T. 30 January 2012 (NUON Chea), p. 18; T. 31 January 2012 (NUON Chea), pp. 37-38; IENG Thirith Interview by Kassekampen, E3/656, p. 1, ERN (En) S 00799180; T. 31 October 2013 (NUON Chea), pp. 23-24.

[408] T. 13 December 2011 (NUON Chea), pp. 27-29.

[409] *See* Section 5: Administrative Structures, paras 223-228; NUON Chea Interview by KHEM Ngun, E3/3, p. 22, ERN (En) 00184673 ("And since then, liberation in 75, it was united. As I see it, taking then people from the city, but the smashing, that was not known, the group down below went bad […]")

[410] KHIEU Samphan Interview Transcript, E3/4051, pp. 1-2, ERN (En) 00788872-73; Video of KHIEU Samphan Interview, E152.1.52R; NUON Chea Interview by Japanese Journalist, E3/26, undated, p. 8-9, ERN (En) 003929511-12 ("He [KHIEU Samphan] had power as well, he never said he had no power at all. But various and different duties. […] He did have some [power], but he had no power on his own. He pushed on the perimeters, helped with opinions, helped things.")

[411] T. 25 July 2012 (David CHANDLER), pp. 54-55.

[412] T. 19 July 2012 (David CHANDLER), pp. 70-71, 74-75.

[413] T. 18 July 2012 (David CHANDLER), pp. 44-45; T. 19 June 2012 (YUN Kim) pp. 32-33 (Kratie); T. 11 January 2013 (CHHAOM Se), pp. 47-50.

success of the revolution and that the decision was made in February 1975.[414] While NUON Chea did not recall any subsequent meeting on the issue of the evacuation of Phnom Penh after the mid-1974 meeting, he confirmed that the decision to evacuate was discussed at more than one meeting.[415]

3.4.3. *Early April 1975*

144. The Chamber is satisfied that in early April 1975, senior leaders of the CPK gathered at B-5, the command centre for the attack on Phnom Penh located in Tang Poun village, Kampong Tralach district, Kampong Chhnang province to discuss the forcible transfer of the inhabitants of Phnom Penh.[416] Witness PHY Phuon was present in the vicinity of the meeting and provided a relatively detailed account. The Trial Chamber accepts PHY Phuon's evidence in relation to the overall description of this meeting and its participants, who included both NUON Chea and KHIEU Samphan. In important respects, his evidence on this matter was corroborated by the Accused.

145. The Chamber concludes that POL Pot and other leaders, who were at B-5 prior to the evacuation, attended the meeting together with NUON Chea, KHIEU Samphan and other senior leaders.[417] According to NUON Chea, POL Pot stayed at B-5 from

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[414] SWB/Far Eastern Relations Monitoring Report: *The Far East*, 4 October 1977, E3/2728, ERN (En) 00390921, 00390927; *Pol Pot's Press Conference in Peking* (in SWB Collection), E3/2072, 3 October 1977, S 00080549 ("One of the important factors [of our success] is the evacuation of city residents to the countryside. This was decided before victory was won, that is, in February 1975, because we knew that before the smashing of all sorts of enemy spy organizations, our strength was not strong enough to defend the revolutionary regime").

[415] T. 30 January 2012 (NUON Chea), pp. 17-21; T. 31 January 2012 (NUON Chea), pp. 37-38; T. 13 December 2011 (NUON Chea), pp. 26-29.

[416] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), pp. 12-13, 17; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 4, ERN (En) 00223581; MEAS Voeun Interview Record, E3/424, 16 December 2009, p. 3-4, ERN (En) 00421070-71; HENG Samrin Interview Notes by Stephen HEDER, E3/5593, 3 December 1991, ERN (En) 00419396-97; HENG Samrin Interview by Stephen HEDER, E3/1568, 2 December 1991, ERN (En) 00651879; KHIEU Samphan Interview Record, E3/27, 13 December 2007, ERN (En) 00156743.

[417] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), pp. 12-13; T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 11; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 4, ERN (En) 0223581; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008, ERN (En) 00231409-10; cf. Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I made*, E3/18, July 2004, p. 54, ERN (En) 00103750 ("by the end of March 1975, I was invited to the general headquarters of the [CPK] in Phoum Dong, west of Udong, to follow the last offensive against the capital more closely. Neither Hu Nim […] nor Hou You […] were with me at that time"); NUON Chea testified that POL Pot returned to B-5 after the liberation of Phnom Penh: T. 30 January 2012 (NUON Chea), pp. 37-38.

early April 1975 in order "to command the […] liberation of Phnom Penh."[418] KHIEU Samphan admitted that he had relocated to B-5 to "follow the last offensive against the capital more closely", although he denied participating in the work of the headquarters.[419] The Chamber notes that IENG Sary was also aware of the meeting (which he placed in late March or early April 1975) at which the evacuation of Phnom Penh was discussed, although he claimed not to have been present himself.[420]

146. At the meeting, leaders reported on the battlefield situation in their various regions.[421] POL Pot again raised the issue of the evacuation of Phnom Penh.[422] The military commanders noted that it would be difficult for the cadre to control the people if the city was not evacuated.[423] POL Pot discussed the success of experiments with earlier liberation' of towns and cities as did NUON Chea.[424] According to PHY Phuon, both NUON Chea and KHIEU Samphan supported the plan, and all meeting participants applauded, indicating agreement with the proposal to evacuate Phnom Penh in line with the policy to evacuate urban areas as they were liberated from enemy control.[425]

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[418] T. 30 January 2012 (NUON Chea), (En) p. 38, (Kh) p. 28 (the Chamber relies on the Khmer transcript in light of differences in language versions); *See also,* Notes used by accused NUON Chea during the hearing of 5 December 2011, E148, ERN (En) 00950527

[419] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 3, ERN (En) 00156743; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 57-59 *See also* Section 3: Historical Background, paras 144-147.

[420] IENG Sary Interview by Stephen HEDER, 17 December 1996, E3/89, ERN (En) 00417603.

[421] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), pp. 14, 23.

[422] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), p. 13.

[423] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), p. 14.

[424] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), p. 24.

[425] T. 26 July 2012, (ROCHOEM Ton *alias* PHY Phuon), pp. 14, 16, 23-24; T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 44-45; The KHIEU Samphan Defence challenges the credibility of this witness, alleging that he contradicted himself in his description of the location of the meeting and his ability to observe and hear what was occurring. *See,* KHIEU Samphan Defence Closing Brief, 26 September 2013, paras 19-33. Having examined the context of the witnesses' testimony, the Chamber considers his testimony to be largely consistent with his statement to the Co-Investigating Judges. *See* T. 2 August 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 17; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 57-61; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008, ERN (En) 00231410; In particular, it appears from the Khmer and French versions of the Interview Record (E3/63) and the Khmer transcripts of that interview (E3/63.1) that the witness described the place where the meeting took place as an ordinary shed and further he was consistent in his statements that he was able to hear and to see everything inside; *See also,* Section 3.4.1: June 1974 (At which the Central Committee decided upon the strategy for the final offensive to 'liberate' the country, including evacuation); Section 3: Historical Background, paras 148-151 (Orders issued following the early April 1975 meeting and relating to the plan for the final offensive concerned Phnom Penh and all territory still held by the enemy).

147. The Chamber further notes that both KHIEU Samphan and IENG Sary expressed a comprehensive understanding of the decision-making process that led to the evacuation of Phnom Penh. In a video-taped interview, KHIEU Samphan asserts that had there been a single voice against the evacuations, they could not have taken place. The reason for the evacuations, he states, were to prevent the people from dying of starvation.[426] Further, it was KHIEU Samphan who announced the final assault of Phnom Penh on the Voice of FUNK, although the evacuation of the city was not announced.[427] For his part, IENG Sary discussed the evacuation of Phnom Penh with POL Pot at least in June 1974 and likely in April 1975. Both KHIEU Samphan and IENG Sary therefore had prior knowledge of the details of the evacuation that is consistent with their having taken part in the decision-making process.

3.4.4. ***Orders passed to lower cadre***

148. After the early April 1975 meeting at B-5, meetings were held with the Khmer Rouge forces to give orders to RAK division commanders to evacuate Phnom Penh and other cities.[428] For example, Khmer Rouge cadre SEM Hoeun was told by his commander that the commanders met prior to 17 April 1975 to discuss the evacuation of Phnom Penh and later informed their subordinates.[429] CHHOUK Rin, a former Khmer Rouge commander, reported that a meeting was held in Phnom Sar at the army headquarters in Kampot Province about one month before the fall of Phnom Penh at which Ta Mok discussed the closure of markets, the abolition of currency and evacuation of Kampot Town.[430] Ta Mok also discussed the plans for the evacuation of Kampot which closely resembled the practice that was followed in Phnom Penh and

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[426] KHIEU Samphan Interview Transcript, E3/4051, pp.1-2, ERN (En) 00788872-73; Video of KHIEU Samphan Interview, E152.1.52R.
[427] *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, ERN (En) 00166659-61.
[428] T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 57; T. 14 December 2011 (NUON Chea), pp. 2-4. ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008, ERN (En) 00231410.
[429] SEM Hoeun Interview Record, E3/5280, 10 March 2009, ERN (En) 00290514.
[430] T. 22 April 2013 (CHHOUK Rin) pp. 89-94.

other parts of the country.[431] For this reason, it was CHHOUK Rin's belief that the evacuations were executed based upon an agreement among the leaders.[432]

149. Several witnesses confirmed that instructions from higher levels were relayed downwards through the ranks of the RAK. Witness KHORN Brak stated before the Co-Investigating Judges that there was a meeting three days before the attack on Phnom Penh where troops were told that they had to evacuate the city after it was liberated, and tell LON Nol soldiers to put down their weapons.[433] CHHAOM Se stated that orders to evacuate Phnom Penh were blanket orders carried out in every battlefield as every city had to be emptied of their inhabitants in accordance with a plan established in advance.[434] Two Khmer Rouge soldiers at the time of Phnom Penh's liberation, CHEA Say and SUM Chea, received orders to help evacuate people from the city, but only after Phnom Penh was liberated.[435] Similarly, KUNG Kim only became aware of the plan to evacuate when he entered Phnom Penh with his platoon and noticed people were on the move. His platoon had orders to cut the water supply to force people to leave their houses, or to enter houses if people remained inside, to ensure that people had been evacuated from their area, and to clean the houses or the roads.[436] The uniformity of these orders indicates that there was a coordinated plan at the outset.[437]

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[431] T. 22 April 2013 (CHHOUK Rin) pp. 89-94.

[432] T. 22 April 2013 (CHHOUK Rin) pp. 89-94.

[433] KHORN Brak Interview Record, E3/509, 8 January 2009, pp. 2-3, ERN (En) 00282215-16; THA Sot Interview Record, E3/464, 19 January 2008, p. 3, ERN (En) 00226108 (received orders from his chief to evacuate people although unclear as to when).

[434] T. 11 January 2013 (CHHAOM Se), p. 59; T. 8 April 2013 (CHHAOM Se), pp. 34, 66.

[435] T. 20 September 2012 (CHEA Say), p. 44-45 (a soldier at the time of Phnom Penh's liberation, testified he was ordered by his commander to help evacuate people from the city after Phnom Penh was liberated); T. 5 November 2012 (SUM Chea), pp. 7, 10-11 (a Khmer Rouge soldier in 1972, stated that his division received orders from the head of the battalion, Hak, to evacuate people from Phnom Penh, although he did not know from whom Hak received his orders). *See also,* SAU Ren DC-CAM Statement, E3/2073, 24 January 2003, ERN (En) 00876404-05 (received his orders from his deputy chief of regiment); Report of the Execution of Rogatory Letter, E3/3885, 20 March 2008, pp. 3-4, ERN (En) 00205123-24 (HIM Han's unit commander held a meeting informing them of instructions to evacuate seven day *after* Phnom Penh fell). *See also,* PRAK Yoeun Interview Record, E3/471, p. 3, ERN (En) 00223335.

[436] T. 24 October 2012 (KUNG Kim), pp. 90-91, 101; T. 25 October 2012 (KUNG Kim), pp. 18-21, 53, 57-58.

[437] *See also,* SRENG Thi Interview Record, E3/5263, 6 January 2009, p. 3, ERN (En) 00282224 ("a half-month before 17 April 1975, when my unit […] approached close to Phnom Penh, Soeun, my battalion commander, told me and the other combatants in the unit that they had to evacuate all the people form Phnom Penh (he [did] not say anything beyond that) until things were back to normal and they could return"); SEM Hoeun Interview Record, E3/5280, 10 March 2009, p. 3, ERN (En)

150. Other Khmer Rouge cadres and military personnel testified that they had not been told about the evacuation beforehand. MEAS Voeun, a commander of Regiment 16, Division 1, in the Southwest Zone whose division was responsible for attacking Phnom Penh from the southwest,[438] CHUON Thi, who was in the same division, and UNG Ren, an officer in Brigade 14 also attacking from the Southwest, testified that their respective units did not receive orders to evacuate civilians from Phnom Penh.[439] SAUT Toeing, NUON Chea's bodyguard and/or messenger, PEAN Khean, a messenger for the CPK, and SUON Kanil, a morse operator working close to senior cadres of the Central Zone also knew nothing about plans to evacuate Phnom Penh although on 17 April 1975 they saw a lot of people walking out of the city and Khmer Rouge soldiers guarding offices around the city.[440]

151. Although certain cadres were not informed of the decision to empty Phnom Penh of its inhabitants prior to the final assault, the Chamber is satisfied on the basis of evidence concerning the planning of this movement of population and cadres who were informed of the plan in advance, and the consistent manner in which the evacuation was executed throughout the city, that there was in fact a decision to that

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00290514 ("I realized that prior to 17 April 1975, all commanders were invited to a meeting which was about the evacuation of Phnom Penh […] [t]hose commanders subsequently communicated those plans to subordinates"); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 60, ERN (En) 00170751 ("About 10 days before the liberation, the plan to evacuate Phnom Penh was sent down. This came after fall of Neak Loung. There was no set-period in which people were supposed to be gotten out of city but each unit and region was to make its own decision").

[438] T. 3 October 2012 (MEAS Voeun), pp. 88-89, 93-94.

[439] T. 3 October 2012 (MEAS Voeun), p. 95; T. 9 January 2013 (UNG Ren), pp. 41-42; T. 24 April 2013 (CHUON Thi), p. 47.

[440] T. 19 April 2012 (SAUT Toeung), pp. 78-81; T. 2 May 2012 (PEAN Khean), p. 57; T. 24 April 2013 (CHUON Thi), pp. 30, 45-48, 71; T. 14 December 2012 (SUON Kanil), p. 57; T. 17 December 2012 (SUON Kanil), pp. 21-22; *See also*, UM Keo Interview Record, E3/5173, 8 May 2008, pp. 2-3, ERN (En) 00272659-60 ("When my unit arrived, I saw LON Nol soldiers had raised white flags, but my unit had no plans to chase or evacuate the people from Phnom Penh because before entering Phnom Penh, my squad had already received orders from the commander … [When] we heard them announce for the people to leave the city, my regimental commander wondered about this, because my unit had received orders to maintain and keep the people as normal"); HIM Han Interview Record, E3/5532, 18 December 2009, p. 3, ERN (En) 0042533 (did not know about the plan to evacuate, only knew of the plan to capture Phnom Penh); *See also*, Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p.36, ERN (En) 00170727 (A man from Tambon 13, Takeo, in Southwest, stated "[A]s far as I know, the plan to evacuate Phnom-Penh was not announced ahead of time. […][But] I feel that the plan to evacuate Phnom-Penh was part of a general, long standing policy because that was what we had always done before when we liberated an enemy zone. In the past, we evacuated people from the zones we liberated because we were afraid we would be unable to hold these areas against counter-attack and thus unable to maintain peoples' security. And also because people were source of labour power [sic]. And if we gather up the people we would have forces with which to defeat the enemy.")

effect by the senior CPK leaders that was passed down the military hierarchy, albeit imperfectly.

3.4.5. ***Conclusion***

152. Given the evidence above, it is clear that NUON Chea was instrumental in the decision to liberate and transfer the population from Phnom Penh and other urban centres. KHIEU Samphan told the Co-Investigating Judges that he was not involved in the decision to evacuate Phnom Penh learning of the evacuation from soldiers in Oudong only before departing for Phnom Penh. He stated that he discussed the policy of evacuating Phnom Penh, which he considered to be a grave mistake, after the fact with POL Pot.[441] While Philip SHORT considered that KHIEU Samphan was not part of the decision-making apparatus,[442] the Chamber does not find KHIEU Samphan's statements that he was entirely ignorant of the plans to evacuate Phnom Penh to be credible. Given his close relationship with NUON Chea, POL Pot and IENG Sary, and the evidence summarised above,[443] the Chamber is satisfied that NUON Chea, as well as KHIEU Samphan and IENG Sary, participated in the decision to evacuate Phnom Penh and other urban centres.

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[441] KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 6-8, ERN (En) 00156747, 00156749; KHIEU Samphan Interview by HENG Reaksmei, 15 October 2007, E3/586, pp.1-2; KHIEU Samphan: Second "Open Letter", E3/592, 29 December 2003, ERN (En) 00002804; *I Knew Nothing*, (Newsweek International), E3/629, 18 September 2006.

[442] T. 6 May 2013 (Philip SHORT), pp. 52-53; *See* Section 8: Roles and Responsibilities – KHIEU Samphan, paras 385-387.

[443] *See e.g.* Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, July 2004, p. 55 ERN (En) 00103750; ("When I asked, they said the order had been given to evacuate the entire population from the capital. My heart skipped a beat."); T. 31 October 2013 (KHIEU Samphan), pp. 69 ("I never wanted or decided to evacuate the people, and neither did I plan or decide [to do so]."), 70-71 ("I would like to reiterate that I did not witness the things that could have happened days following the victory, and neither did I have any power to intervene, or sanction, or rectify anything. Some even said that I was a coward. The reality was that I did not have any power and I did not care about it either.")

3.5. Justification for the Transfer of the Population of Phnom Penh - American Bombings

153. The CPK leadership cited the possibility of American bombing attacks on Phnom Penh as a justification for the transfer of the population out of the city.[444]

154. From March 1969, with the apparent acquiescence of NORODOM Sihanouk,[445] the U.S. military secretly bombed locations in the eastern provinces of Cambodia, although there were planes straying across the border from Vietnam even prior to this.[446] They initially targeted the HO Chi Minh Trail, a route from North Vietnam through Cambodia into South Vietnam, by which Vietnamese communists supported the conflict in Vietnam with troops and supplies.[447] After NORODOM Sihanouk was deposed, the United States also sent thousands of ground troops into Cambodia from April to June 1970.[448] In December 1970, in response to domestic opposition to U.S. military intervention in Cambodia, the U.S. Congress appears to have prohibited the use of funds for "United States personnel in Cambodia who furnish military instruction to Cambodian forces or engage in any combat activity."[449]

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[444] French Ministry of Foreign Affairs Telegram, Subject: Situation in Phnom Penh – 21h00, E3/2688, 17 April 1975, p. 1, ERN (En) 00491356; T. 13 December 2011 (NUON Chea), p. 30 (after the liberation of Phnom Penh it was not clear whether Americans would continue to be involved); T. 6 June 2013 (NUON Chea), p. 38 ("If our soldiers come to control the city, will the Americans bomb […]."); T. 2 August 2012 (SUONG Sikoeun), pp. 99-100; T. 25 October 2013, pp. 63-65.

[445] Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, 1979, pp. 70, 92-95, ERN (En) 00429757, 00429779-82; The NUON Chea Defence also relies on the book *Sideshow* by William SHAWCROSS. *See* NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, n. 581.

[446] Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 19-24, ERN (En) 00429706-11; T. 23 July 2012 (David CHANDLER), pp. 40-43, 125; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 182, ERN (En) 00396382; *cf.* T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 31 (bombing began in 1962 on Nhang Commune which is now part of Vietnam, and intensified in 1969).

[447] T. 23 July 2012 (David CHANDLER), pp. 126-127; T. 11 April 2013 (François PONCHAUD), pp. 25-26, 28; T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 32-33 (Americans were targeting Viet Cong troops in Kampuchean territory); T. 6 December 2011, (NUON Chea), p. 11 (Vietnam was suffering from carpet bombardment and Vietnam had encroached on Cambodian territory to allow Vietnamese to reside in villages there).

[448] Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 204, 215, ERN (En) 00396404, 00396415; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 396, ERN (En) 00430099; Book by W. DEAC, *Road to the Killing Fields: The Cambodian War of 1970-1975*, E3/3328, p. 77-78, 250 ERN (En) 00430657-58, 00430830; T. 9 April 2013 (François PONCHAUD), p. 12; T. 11 April 2013 (François PONCHAUD), pp. 33-34.

[449] Book by W. DEAC, *Road to the Killing Fields: The Cambodian War of 1970-1975*, E3/3328, p. 79, ENR (En) 00430659; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 399, ERN (En) 00430102.

Nonetheless, and as demonstrated below, U.S. military bombings continued until August 1973.[450]

155. On 27 January 1973, the United States signed a ceasefire agreement with Vietnam.[451] The Khmer Rouge, for their part, refused to sign a ceasefire with the LON Nol government and there followed a sharp increase in the U.S. bombing of Khmer Rouge-controlled locations throughout Cambodia.[452] In total, the U.S. dropped several hundred thousand tonnes of bombs in Cambodia.[453] Although many of the bombs fell in areas that were not heavily populated, it is estimated that tens of thousands of people were killed.[454] François PONCHAUD, who was in Phnom Penh at the time, testified that people were terrified and traumatised by the carpet bombing.[455] The primary effect was probably to drive people from rural areas to take

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[450] Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 213-218, ERN (En) 00429900-05.

[451] SUONG Sikoeun Book Manuscript, E3/40, 2000, ERN (Fr) 0078993; Book by F. PONCHAUD: *Cambodia Year Zero*, E243.1, ERN (En) 00862112 (After the agreements concluded with North Vietnam on January 27, 1973, America undertook to restore peace in Cambodia by detaching the Khmer Rouge from Sihanouk and launching the idea of a coalition government to be formed after negotiation with all parties concerned); Department of Press and Information of the Ministry of Foreign Affairs of Democratic Kampuchea – Black Paper Publication, E3/23, September 1978, p.60, ERN (En) 00082543(Kampuchea refused to negotiate and cease-fire in spite of the Vietnamese pressures, threats and provocations).

[452] T. 23 July 2012 (David CHANDLER), pp. 40-43, 125; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 260-265, 272 ERN (En) 00429947-52, 00429959. .

[453] T. 24 July 2012 (David CHANDLER), pp. 141-142; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 272, ERN (En) 00429959 ("In all of 1972 the B-52s had dropped just under 37,000 tons of bombs onto Cambodia. In March 1973 they dropped over 24,000, in April about 35,000 and in May almost 36,000 tons. So with the fighter bombers. In 1972 they had loosed 16,513 tons of bombs at their targets. In April 1973 alone, they dropped almost 15,000 tons, and the figure rose monthly to over 19,000 tons in July.")

[454] T. 23 July 2012 (David CHANDLER), pp. 40-43, 125; T. 11 April 2013 (François PONCHAUD) pp. 27, 30 (estimating there were 40,000 deaths); Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 35, ERN (En) 00429722 ("Peasants were killed-no one knows how many […]."); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 52, ERN (En) 00103749 (KHIEU Samphan estimates bombings killed tens of thousands of Cambodians); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 31-32 (in 1968 and 1969, even rice fields were heavily bombed and starting in 1964 people left the villages to stay in the jungle because of the heavy bombardments); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 36 (by 1969 villagers were used to the bombings and learned to avoid them by fleeing into the jungle without injury, but the cattle died; 31of the witness' family members died from a bombardment in 1973).

[455] T. 9 April 2013 (François PONCHAUD), p. 14; *See also*, Documentary by P. DU CANE and M. KELLEY: *Cambodia Year Zero 5 – the Bloodiest Domino*, E3/3137R (Witness stating ordinary people were terrified and some would become shell-shocked, like their brains were completely shattered. Terrified and half crazy, they would believe anything they were told, and because there was so much shelling they believed whatever the Khmer Rouge told them).

refuge in Phnom Penh, contributing to a massive increase in the city's population.[456] The bombing also had an effect on the Khmer Rouge forces and delayed the Khmer Rouge's ability to take over Phnom Penh by several years.[457] Several witnesses testified to being affected by the American bombings and attempting to seek shelter.[458]

156. American bombings ended on 15 August 1973 after the U.S. Congress passed a law blocking funding for the continued bombing of Cambodia on 10 May 1973.[459] There was some evidence of post-15 August 1973 bombing raids on CPK-controlled territory prior to the evacuation of Phnom Penh. Some of these attacks were attributed to the Americans, although these were more likely the result of action by remaining Khmer Republic forces.[460]

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[456] T. 23 July 2012 (David CHANDLER), pp. 45-47; T. 9 April 2013 (François PONCHAUD), p. 16; T. 11 April 2013 (François PONCHAUD), pp. 28, 40; T. 6 June 2012 (SAO Sarun), pp. 50-51 (after the liberation of Mondulkiri by the Khmer Rouge in 1970, witness' village was bombed almost every day forcing all of the residents to flee, including monks whose pagoda was destroyed in Chi Miet).

[457] Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 110, July 2004, ERN (En) 00103778 (the American bombings "not only decimated the Khmer Rouge army, they also accelerated the collapse of Cambodia's rural society […]."); T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 83-85 (the American bombing campaign in Cambodia forced the revolutionary movement into the jungles in Ratanakiri and required moving their offices frequently); T. 23 July 2012 (David CHANDLER), p. 41; T. 21 August 2012 (KIM Vun), pp. 53, 61 (fear of air raids prevented cadre from moving freely).

[458] T. 3 April 2012 (KAING Guek Eav), p. 76-77 (witness testified that when he was working at M-13, between 1971 and 1975, when B-52 bombers flew overhead, he had to take refuge in trenches. The entire ground shook and bombs left big craters); T. 10 January 2013 (UNG Ren), pp. 54-56 (witness testified he experienced American bombings along road number 26); Witness EK Hen testified that her father died in 1971 in Svay Teab as a result of bombing. She attributed the bombing to LON Nol aircraft although the American bombings coincided with this time frame. *See* T. 3 July 2013 (EK Hen), pp. 18, 21, 67.

[459] T. 6 June 2013 (Sydney SCHANBERG), p. 44, 46; T. 11 July 2013 (Stephen HEDER), p. 75; T. 28 January 2013 (Al ROCKOFF), p. 10-11 ("I remember that date very well. I was out on National Road No. 3 most of that morning. I remember right around 12 noon, which was supposed to be the end of the American bombing campaign, there were a few bombing missions in the vicinity and then it stopped. So I have a very clear recollection of 15 August."); T. 6 May 2013 (Philip SHORT), pp. 12-13; DK Publication: *Black Paper*, E3/23, September 1978, p.60, ERN (En) 00082543("from February to 15 August 1973, the U.S. imperialists were launching a savage air war against Kampuchea's revolution carrying out intensive bombings, days and nights, against Kampuchea."); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 52, ERN (En) 00103749 ("Finally, the US Congress suspended the war budget and, by the middle of August 1973, demanded that the United States stop the bombing."); *See also*, Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 284, 299, 400, ERN (En) 004299987, 00430002, 04430103.

[460] T. 25 October 2012 (KUNG Kim), p. 36 (several months before the final assault on Phnom Penh, there were aerial bombardments during the surge of the attack by soldiers, there were casualties. Each time, there were between 20 to 30 casualties); T. 10 January 2013 (UNG Ren), pp. 54-56 (bombings happened before the attack on Phnom Penh, and only stopped when Khmer Rouge advanced to the

3.6. Refugee Conditions and Food Shortages in Phnom Penh

157. From 1970-1975 there was an influx of refugees[461] from the countryside into Phnom Penh, increasing the city's population from around 0.5 million in 1970-71 to an estimated 2 to 2.5 million in April 1975.[462] According to François PONCHAUD, who was working with a refugee organisation in Phnom Penh, people were fleeing the

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outskirts of Phnom Penh); T. 29 January 2013 (Al ROCKOFF), pp. 41-43 (after the Americans stopped bombing, the Khmer Air Force had limited resources and was conservative in how they deployed people and planned operations); T. 11 July 2013 (Stephen HEDER), pp. 75 (after 15 August 1973, U.S. bombing completely ended, but Khmer Republic air force bombing continued as did shelling by Khmer Republic ground forces).

[461] As used in this section, "refugee" refers to persons who were displaced from their homes. However, these individuals would likely be classified as "Internally Displaced Persons" (IDPs) under international human rights and humanitarian law. *See* Guiding Principles on Internal Displacement, UN Doc. E/CN./4/1998/53/Add.2, 17 April 1998 (defining Internally Displaced Persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border"); Cf. Convention Relating to the Status of Refugees, 189 UNTS 150, Art. 1(A)(2) (including within the definition of refugee the requirement that a person be outside the country of his or her nationality.)

[462] T. 23 July 2012 (David CHANDLER), pp. 45-47; T. 9 April 2013 (François PONCHAUD), p. 16; T. 11 April 2013 (François PONCHAUD), pp. 27, 40; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 5, 7, 15, 37, ERN (En) 00898217-20; T. 29 January 2013 (Al ROCKOFF) pp. 6-7, 47; T. 13 December 2012 (Denise AFFONÇO), p. 75; U.S. State Department Telegram, Subject: Recent Movement of Khmer Refugees to Neak Loeung, E3/4185, 10 July 1974 (reporting on the displacement of 14,300 refugees form insurgent controlled areas to government positions at Neak Loeung); T. 12 December 2012 (Denise AFFONÇO), pp. 64-67 (every day saw crowds of refugees who had been evacuated from neighbouring villages trooping into town, they told her what was happening in their villages. The capital was the only place where they could find a certain level of safety); T. 13 December 2012 (Denise AFFONÇO), pp. 75-76 (every day crowds of refugees arrived in Phnom Penh. The city then was about 2 million inhabitants. With all the refugees entering the city, there were more than 3 million of inhabitants before the evacuation); T. 22 November 2012 (MEAS Saran), pp. 50-53, 69 (there was a great influx of people into Phnom Penh as the Khmer Rouge forces pushed closer to the city in the days before its evacuation; in fact, the population of Phnom Penh had tripled because of the newcomers. The increased population crowded the city, and life was not easy); World Vision International Letter, E3/4188, 3 May 1971 (reporting in 1971 that the once crowded city of 750,000 has now swelled to over 1.5 million); T. 6 June 2013 (Sydney SCHANBERG), p. 58 (the city had grown from one million to two million, the extra million were people who fled into Phnom Penh and there wasn't enough food); T. 7 June 2013 (Sydney SCHANBERG), p. 49 (citing Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 216, ERN (En) 00396416, "The population of Phnom Penh, which consisted of 671,000 inhabitants [in 1970] exceeded one million at the end of the year [1970] and reached 2.5 million in 1975."); T. 11 April 2013 (François PONCHAUD), pp. 16, 38 ("We could say 2 to 3 million, but these are estimates."), (these are estimates, "there were simply no statistics."); *Cambodia Can Hold Out With Essential Aid* (in FBIS Collection), E3/118, 5 April 1975, ERN (En) 00166915 (noting there are at least two million refugees in Phnom Penh area and they have to be fed); T. 9 April 2013 (François PONCHAUD), p. 16 (there could have been 2 to 3 million people in Phnom Penh at that time); *See also*, *Revolutionary Flag*, E3/166, Februrary-March 1976, p. 13, ERN (En) 00517825 (refers to "the more than two million people who had recently been evacuated from the various cities.").

Khmer Rouge as well as the American bombings.[463] Sydney SCHANBERG insisted however that refugees he interviewed spoke of the Khmer Rouge closing in, the seizing of their towns and their wish to feed their children as the reasons for their flight to Phnom Penh.[464] Refugees told Civil Party Denise AFFONÇO that they were leaving their villages because the country was at war all around and the capital was the only place with a certain level of safety.[465]

158. By 1975, there were refugee camps surrounding Phnom Penh and several within the city, including one at the Olympic stadium and one at the site of the then incomplete Cambodiana hotel. The food and sanitation situation in these camps, and in Phnom Penh in general, was very poor.[466]

159. The U.S. government was providing aid to the LON Nol government-held areas by transporting rice from South Vietnam to Phnom Penh via the Mekong River, and later by air.[467] The Khmer Rouge targeted these transports to Phnom Penh with mortars and rockets and blocked access via the Mekong River by placing mines.[468] Although there were food shortages already during the period 1970-1975,[469] the food situation in Phnom Penh worsened after the Khmer Rouge cut off access to the

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[463] T. 11 April 2013 (François PONCHAUD), pp. 26-27; *See also*, T. 29 January 2013 (Al ROCKOFF) p. 13.

[464] T. 6 June 2013 (Sydney SCHANBERG), pp. 59-60.

[465] T. 12 December 2012 (Denise AFFONÇO), p. 67.

[466] T. 23 October 2012(LAY Bony), p. 85 (food prices surged and she could hardly find any rice to buy); T. 11 April 2013 (François PONCHAUD), p. 29; Book by W. SHAWCROSS: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 220-224, 225-227, ERN (En) 00429907-14; T. 28 January 2013 (Al ROCKOFF), pp. 83, 113-114; T. 29 January 2013 (Al ROCKOFF), pp. 7-8, 11.

[467] T. 15 July 2013 (Stephen HEDER), pp. 50-53; T. 11 April 2013 (François PONCHAUD), p. 30; T. 29 January 2013 (Al ROCKOFF) p. 10.

[468] T. 5 June 2013 (Sydney SCHANBERG), pp. 28; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, 16 January 1975-77 February 1975, pp. 9-12, ERN (En) 00898217-20; *Revolutionary Flag*, E3/11, September 1977, p. 34, ERN (En) 00486245-46; *Cambodians Urged to Unite in New Year's Offensive* (in FBIS Collection), E3/30, 31 December 1974, ERN (En) 00166660 (KHIEU Samphan states: "All strategic ground routes of the enemy have been cut […] He is faced with increasing difficulties and greater obstacles on the Mekong River […] Rice and other foodstuffs have become more scarce."); *KHIEU Samphan 14 Jan Message to CPNLAF Fighters* (in FBIS Collection), E3/30, 15 January 1975, ERN (En) 00166709 ("[T]he Mekong – the sole route for the transportation of rice and other food, fuel oil and munitions from South Vietnam to feed the clique of the traitor Lon Nol and associates – is completely blocked."); *AKI Notes CPNLAF's Increased Control of Mekong River* (in FBIS Collection), E3/488, 20 February 1975, ERN (En) 00166763 ("Since 11 February, […] no ship has arrived at or left Phnom Penh port.").

[469] USAID Report: *Cambodia Termination Report Vol. 1*, E3/4178, September 1975; T. 11 April 2013 (François PONCHAUD), pp. 29-30.

Mekong River in 1975.[470] According to NUON Chea, although there was not an abundance of food in the cooperatives, the population needed to be evacuated from Phnom Penh where the food situation was dire so they would have enough to eat.[471] He explained that at the time of the mid-1974 meeting at which it was decided to evacuate Phnom Penh, the United States of America had suspended its aid to Cambodia, and Phnom Penh subsequently experienced a food shorage as an immediate consequence of the end of this support.[472] Thus, the plan was to relocate people to other areas of Cambodia where food was available, such as in the Northwest Zone, to alleviate the food problem in Phnom Penh.[473]

160. A draft 1975 report of the U.S. Agency for International Development attributed the food crisis to "the breakdown of security."[474] The report indicated that rice stocks in Cambodia "were seldom adequate for more than a few weeks," and at one point in November 1974 there was only a three-day supply. The report predicted that "without large scale external food and equipment assistance there will be widespread starvation between now [September 1975] and next February [1976]."[475]

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[470] T. 11 April 2013 (François PONCHAUD), p. 30; T. 6 June 2013 (Sydney SCHANBERG), pp. 58-59; T. 24 October 2012 (LAY Bony), pp. 47-51 (prior to liberation Phnom Penh was in a state of chaos; the city was overcrowded and the food supply was a problem); T. 22 November 2012 (MEAS Saran), pp. 40-43, 49-50 (in the lead up to the evacuation, there were no food shortages per se, but it became more difficult to access food as the prices increased daily; during the last few days in Phnom Penh, food was very expensive as people continued to flow into the city); T. 5 December 2012 (PECH Srey Phal), pp. 11-14 (noted the cost of living was rising, including prices of medicine and food; "food was scarce and people found it more and more difficult to get what they needed."); T. 12 December 2012 (Denise AFFONÇO), pp. 76-77 (it was not a famine as there was still food to be found; while supplies were short people were still able to feed themselves); T. 13 December 2012 (Denise AFFONÇO), pp. 77-78 (food prices, and even the price of the sweetened condensed milk that was made in her former factory (Sokilait), went up considerably).

[471] T. 13 December 2011 (NUON Chea), pp. 29-30.

[472] T. 13 December 2011 (NUON Chea), p. 27; T. 30 January 2012 (NUON Chea), pp. 14-17; T. 31 January 2012 (NUON Chea), p. 15. *See also*, French Ministry of Foreign Affairs Telegram, Subject: Conversation with the Chinese Ambassador, E3/2708, 13 May 1975, p. 2, ERN (En) 00753569 (Chinese ambassador considered the evacuation attempted to resolve the food issue).

[473] T. 13 December 2011 (NUON Chea), p. 30.

[474] USAID Report: *Cambodia Termination Report Vol. 1*, E3/4178, September 1975, p. 10, ERN (En) 00291334.

[475] USAID Report: *Cambodia Termination Report Vol. 1*, E3/4178, September 1975, p. 17, ERN (En) 00291340.

3.7. Final Assault on Phnom Penh

161. Starting in 1973 and increasing in 1974-1975 until the liberation of Phnom Penh, Khmer Rouge forces shelled Phnom Penh with rockets and other ordnance.[476] The Khmer Rouge did not have proper rocket launchers and rockets fell primarily in residential areas.[477] Stephen HEDER was told about the sources of this ordnance by a Japanese military attaché whose information likely originated from Khmer Republic military intelligence.[478] He testified that, under the overall direction of the General Staff chaired by SON Sen, 105mm shells were fired from the Special Zone troops commanded by IN Lorn alias Nat, and that the 107mm shells coming from the east were fired by the East Zone Division 1 or 2 troops. [479]

162. With the attacks on LON Nol government-held territories on-going, KOY Thuon and other senior leaders met towards the end of 1974 in Damnach Smach (near Oudong) to plan the liberation of Phnom Penh.[480] Then, on 1 January 1975, the CPK began its final assault on Phnom Penh.[481] The offensive was announced in a statement by KHIEU Samphan in a radio broadcast of 31 December 1974.[482]

163. From February to April 1975, the shelling continued unabated, killing and injuring hundreds of civilians.[483] Around 14-15 April 1975, there was an exodus of

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[476] T. 11 July 2013 (Stephen HEDER), p. 77, 80, 82; T. 14 November 2012 (MEAS Saran), pp. 91-92.

[477] T. 5 June 2013 (Sidney SCHANBERG), p. 21 (Khmer Rouge had Chinese made rockets but no machinery to get them in the air so they improvised wooden launchers); T. 11 July 2013 (Stephen HEDER), p. 80; T. 23 October 2012 (LAY Bony), p. 83.

[478] T. 11 July 2013 (Stephen HEDER), pp. 82-83.

[479] T. 11 July 2013 (Stephen HEDER), pp. 79-81; *See also*, Section 5: Administrative Structures, para. 240.

[480] T. 2 May 2012 (PEAN Khean), pp. 63-64.

[481] T. 11 July 2013 (Stephen HEDER), p. 76; *Khmer Rouge Launch New Year's Offensive* (in FBIS Collection), E3/30, 1 January 1975, ERN (En) 00166658; Central Committee Decision, E3/12, 30 March 1976, p. 3, ERN (En) 00182811; *Revolutionary Flag*, E3/747, August 1978, p. 20, ERN (En) 00499785 ("At 1 a.m. on 1 January 1975, every military unit including militias and district, sector, and Zone and Center military forces at every spearhead had to attack, pound and penetrate following the plans set by the Party.").

[482] *Cambodians Urged to Unite in New Year's Offensive* (in FBIS Collection), E3/30, 31 December 1974, ERN (En) 00166659-61.

[483] T. 11 January 2013 (CHHAOM Se), p. 58; T. 5 June 2013 (Sydney SCHANBERG), p. 21; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, 16 January 1975-7 February 1975, p. 22, ERN (En) 00898230 ("In the nine weeks since the offensive began, about 1000 rockets have fallen on the capital, killing more than 150 civilians and wounding nearly 600 others."); *Heavy Fighting Continues around Phnom Penh, More Rocket Attacks* (in FBIS Collection), E3/30, 2 January 1975, ERN (En) 00166662 (15 rockets fired into the capital the day before killed seven and wounded 13, according to official figures); *Khmer Rouge Rockets Hit Phnom Penh* (in FBIS Collection), E3/30, 10

thousands of people fleeing from refugee camps in Takhmau towards the centre of Phnom Penh a rocket attack by the Khmer Rouge.[484] Civil Party MEAS Saran, a nurse working in a hospital in Borei Keila, at a hospital designated to receive victims of the rocket attacks, testified that people were terrified by the Khmer Rouge bombing attacks and the influx of people from the countryside.[485]

164. On 1 April 1975, after strategic military losses, President LON Nol was persuaded to resign and went into exile.[486] Two days later, KHIEU Samphan issued a statement announcing that the "seven LON Nol traitors" had fled the country, but indicating the "U.S. Imperialists" were attempting to prolong the war by resorting to negotiation.[487]

January 1975, ERN (En) 00166683 (Three rockets hit Phnom Penh killing one man and wounding three, all Cambodian civilians); *Rockets Land Near Phnom Penh Royal Palace* (in FBIS Collection), E3/30, 13 January 1975, ERN (En) 00166696 (reporting nine people injured when rockets hit a Buddhist monastery and that in the previous three days, 14 rockets hit the capital killing seven people and injuring 24); *Major Attack Ordered to Stop Red Khmer Rockets* (in FBIS Collection), E3/30, 16 January 1975, ERN (En) 00166711 (rockets fired at Pochentong Airport wounded 22 people); *AFP Reports Battle Situation For 19, 20 January, 30 Killed at Capital* (in FBIS Collection), E3/30, 20 January 1975, ERN (En) 00166712 (30 people were killed and 75 wounded by heavy attacks; 40 rockets were fired on Phnom Penh and its airport, one hitting the central market place and around the electric power plant); *AFP Reports Rockets Hit Phnom Penh, Pochentong Airport* (in FBIS Collection), E3/30, 21 January 1975, ERN (En) 00166715 (Four killed and 11 injured by rockets which hit Phnom Penh and Pochentong Airport during fighting); *Kampot Port Under Siege, Phnom Penh Airport Shelled* (in FBIS Collection), E3/30, 29 January 1975, ERN (En) 00166731 (four killed and 10 wounded when rockets struck about a dozen houses in the northern fringes of the city); *Phnom Penh Papers on US Aid, Superpower Collusion* (in FBIS Collection), E3/488, 16 February 1975, ERN (En) 00166755 (Three were killed and 10 injured during Red Khmer rocket attacks on Pochentong Airport); *AFP Interviews Gen Sosthene Fernandez* (in FBIS Collection), E3/488, 25 February 1975, ERN (En) 00166769 (30 rockets fell on Phnom Penh and Pochentong, wounding about 25 people); *AFP Reports More Embassies Evacuating Personnel* (in FBIS Collection), E3/120, 9 March 1975 ERN (En) 00166803 (15 killed and 23 wounded after Khmer Rouge insurgents blasted Phnom Penh and Pochentong Airport with rocket fire); *Government Troops Retake Tuol Leap* (in FBIS Collection), E3/120, 15 March 1975, ERN (En) 00166828 (Khmer Rouge rockets fired into Pochentong and southern Phnom Penh killed two and wounded 15); *Rockets Hit Long Boret's Home, Just Miss US Embassy* (in FBIS Collection), E3/120, 20 March 1975, ERN (En) 00166851 (20 insurgent rockets slammed into Phnom Penh killing four and wounding 15); *Takhmau Abandoned* (in FBIS Collection), E3/118, 15 April 1975, ERN (En) 00166958 (shelling from the far bank of the Bassac River killed and wounded large numbers of people).

[484] T. 28 January 2013 (Al ROCKOFF), pp. 93, T. 29 January 2013 (Al ROCKOFF), pp. 8-9, 46-47.

[485] T. 22 November 2012 (MEAS Saran), p. 19; T. 14 November 2012 (MEAS Saran), pp. 93-94, 96, 99.

[486] *Lon Nol, Delegation Leave Phnom Penh for Indonesia, U.S.* (in FBIS Collection), E3/118, 1 April 1975, p. ERN (En) 00166888; *Revolutionary Flag*, E3/11, September 1977, ERN (En) 00486248; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 263, ERN (En) 00396471; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, ERN (En) 00898243, 00898264.

[487] *KHIEU Samphan Congratulates CPNLAF on Neak Luong Victories* (in FBIS Collection), E3/118, 3 April 1975, ERN (En) 00166923-25 (naming the seven members of the LON Nol regime as traitors: LON Nol, SIRIK Matak, SON Ngoc Thanh, CHENG Heng, IN Tam, LONG Boret, SOSTHENE

165. On 12 April 1975, U.S. marines evacuated the Ambassador and remaining embassy personnel from the U.S. embassy in Phnom Penh, along with Acting President SAUKAM Khoy.[488] On 16 April 1975, the Khmer Republic leadership sent a message to NORODOM Sihanouk in Beijing offering to transfer power immediately to GRUNK, but asking for assurances that there would be no acts of reprisals for acts during active hostilities.[489] NORODOM Sihanouk rejected this offer stating that only an unconditional surrender was acceptable and urging 'first rank traitors' to flee the country because as war criminals they 'deserve nothing less than the gallows.'[490]

166. By the evening of 16 April 1975, CPK military divisions were on the verge of taking over Phnom Penh.[491] Thousands of refugees entered into the city centre. Sydney SCHANBERG described this day in his diary as resulting in the highest

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Fernandez); *KHIEU Samphan Issues Statement on Current Situation* (in FBIS Collection), E3/118, 1 April 1975, ERN (En) 00166897 ("The seven traitorous chieftains have packed or are packing their bags to flee abroad in a bid to escape punishment by our people. Contemptible SON Ngoc Thanh has fled to Saigon, contemptible IN Tam has disappeared, and contemptible SOSTHENE Fernandez and CHENG Heng also recently fled abroad […] contemptible LON Nol and LONG Boret have also packed much luggage to flee abroad in a bid to escape […]."); *CPNLAF Continuing Offensive 'Without Compromise'* (in FBIS Collection), E3/118, 10 April 1975, ERN (En) 00166937 (noting traitors LON Nol, CHENG Heng, SOSTHENE Fernandez, SON Kgoc Thanh and IN Tam have fled Phnom Penh); *LONG Boret Addresses Nation After SAUKAM Khoy Flight* (in FBIS Collection), E3/118, 12 April 1975, ERN (En) 00166939 (noting the unannounced departure of Lt Gen Saukam Koy, acting president of' the Khmer Republic); *LONG Boret Briefs Journalists of New Government's Policies* (in FBIS Collection), E3/118, 13 April 1975, ERN (En) 00166942 (noting Marshal LON Nol fled on 1 April 1975).

[488] Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 43-45, ERN (En) 00898251-53; *Revolutionary Flag*, E3/11, September 1977, ERN (En)00486248; *Long Boret Addresses Nation After Saukam Khoy Flight* (in FBIS Collection), E3/118, 12 April 1975, ERN (En) 00166939-40; U.S. State Department Telegram, Subject: Continuing Contacts with GKR, E3/2938, 12 April 1975, p. 1, ERN (En) 00376694.

[489] *Phnom Penh Leaders Request Cease-Fire, Transfer of Power* (in FBIS Collection), E3/118, 16 April 1975, ERN (En) 00166970; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, p. 60, ERN (En) 00898268.

[490] *Sihanouk Rejects Offer* (in FBIS Collection), E3/118, 16 April 1975, ERN (En) 00166971; Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, p. 61, ERN (En) 00898269.

[491] Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 57-60, ERN (En) 00898265-68; *See* FBIS Collection, E3/118, including the following: *NUFC Radio Reports Pochentong Airport 'Completely Liberated'*, 15 April 1975, ERN (En) 00166950; *Khmer Rouge Begins Attacks on Phnom Penh's Southern Suburbs*, 15 April 1975, ERN (En) 00166950; *Takhmau Abandoned 15 April*, 15 April 1975, ERN (En) 00166958; *Fighting Around Phnom Penh*, ERN (En) 00166958; *Khmer Rouge Occupy Pochentong Airport*, 16 April 1975, ERN (En) 00166958-59; *KYODO: Liberation Forces Enter Southern Phnom Penh*, 16 April 1975, ERN (En) 00166961; *NUFC Radio on Attacks Around Capital, Rebel Pilot's Landing*, 16 April 1975, ERN (En) 00166963; *NUFC Radio Cites Attacks 'In Direction of' Capital's Centre*, 16 April 1975, ERN (En) 00166972.

number of dead in the five years of war and describes the Preah Ket Mealea Hospital as a "slaughterhouse" that was "wall to wall" with wounded.[492]

167. The Khmer Rouge entered Phnom Penh on 17 April 1975.

[492] Book by S. SCHANBERG: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 58-59, ERN (En) 00898266-00898267.

4. GENERAL OVERVIEW: 17 APRIL 1975 – 6 JANUARY 1979

168. The Chamber limited Case 002/01 to the factual allegations described in the Closing Order, and characterised as crimes against humanity, as movement of population (phase one), executions of former Khmer Republic officials at Tuol Po Chrey and movement of population (phase two).[493] However, according to the Closing Order, these movements of population, executions and associated crimes form part of a widespread attack against the civilian population carried out throughout the DK era and in all regions of Cambodia.[494] The Chamber therefore considers it necessary to address briefly both the factual allegations charged as crimes against humanity in Case 002/01 and the allegations concerning the larger context of the attack in which these crimes were committed.

169. Between 17 April 1975 and December 1977, the temporal period at issue in Case 002/01, the Khmer Rouge forcibly transferred the population from cities and towns throughout Cambodia to rural areas and between these rural areas in order to neutralise enemies, both internal and external, and to avert the threat of rebellion; to eliminate and temper the capitalist and feudalist classes; and to build and expand cooperatives.[495] The Party identified the 'New People', including former government officials, intellectuals, landowners, capitalists, feudalists and the petty bourgeoisie, as key enemies of the revolution and collectivisation.[496] To neutralise these enemies, the Khmer Rouge re-educated, moved and eliminated 'New People' and other groups

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[493] Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/01, Amended Further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites Within the Scope of Trial in Case 002/01 (E163) (TC), E124/7.3.

[494] Closing Order, paras 1350-1372.

[495] *See* Section 10: Movement of the Population (Phase One), paras 547-574; Section 11: Movement of the Population (Phase Two), paras 627-657; Section 14: Joint Criminal Enterprise, paras 777-778, 804-810, 835-837.

[496] *Revolutionary Flag*, E3/5, August 1975, pp. 11-12, 26, 30-31, ERN (En) 00401486-87, 00401501, 00401505-06; *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529 (Among the new peasants were the petty bourgeoisie, the capitalists, the feudalists and other workers and labourers. Therefore, there were life and death contradictions); *Revolutionary Flag*, E3/743, July 1977, p. 8, ERN (En) 004716163 ("Enemies" included the imperial aggressor and their servants of every type, the feudalist landowner-capitalist classes, and the various oppressor classes).

incompatible with building socialism including former Khmer Republic officials and, it is alleged, Buddhists, the Cham and the Vietnamese.[497]

170. On 17 April 1975, the Khmer Rouge moved at least two million people from Phnom Penh.[498] The evacuees were provided insufficient, if any, accommodation and assistance, resulting in deaths and suffering.[499] On and after 17 April 1975, people were also displaced from various provincial towns throughout Cambodia, including Kampong Speu,[500] Takeo,[501] Kampot,[502] Sihanoukville (previously, Kampong Som),[503] Kampong Thom,[504] Pailin,[505] Kampong Cham,[506] Kampong Chhnang,[507]

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[497] *See* Section 3: Historical Background, paras 119-127; Section 10: Movement of the Population (Phase One), paras 501-511, 517, 567-574; Section 11: Movement of the Population (Phase Two), paras 613-623, 649-657; Section 12: Tuol Po Chrey, paras 683-687; Section 14: Joint Criminal Enterprise, paras 731, 783-785, 787, 789-790, 795, 805, 811-837; *See also*, Closing Order, paras 740-841 (Concerning the treatment of Chams, Buddhists and Vietnamese).

[498] *See* Section 10: Movement of the Population (Phase One), paras 520, 547.

[499] *See* Section 10: Movement of the Population (Phase One), paras 521-524, 547-552, .

[500] T. 11 January 2013 (CHHAOM Se), pp. 47-50.

[501] T. 11 January 2013 (CHHAOM Se), pp. 47-50; BUN Thien Interview Record, E3/5498, 17 August 2009, pp. 5-6, ERN (En) 00384399-400 (All people in Takeo Town were evacuated around 18 or 19 April 1975).

[502] SOKH Chhien Interview Record, E3/428, 19 August 2009, p. 5, ERN (En) 00374949; KHUN Kim Interview Record, E3/360, 30 April 2008, p. 3, ERN (En) 00268854.

[503] DANH Nhor Interview Record, E3/5197, 15 July 2008, pp. 2-3, ERN (En) 00275030-1 (Around 17 April 1975, people were evacuated from Sihanoukville (previously called Kampong Som) to Kampot); KHIM Khen Interview Record, E3/5190, 2 July 2008, p. 3, ERN (En) 00274658 (After 17 April 1975, people were evacuated from Kampong Som to Prey Nob); LOEUNG Bunny Interview Record, E3/5543, 11 September 2009, p. 3, ERN (En) 00384778 (On 17 April 1975, Khmer Rouge soldiers evacuated people from Sihanoukville to the west).

[504] KROEM Samy Hors Civil Party Application, E3/4933, 3 August 2009, pp. 2-3, ERN (En) 00890979-80 (describing evacuation of Kampong Thom in April 1975); VANN Theng Interview Record, E3/5249, 8 October 2008, p. 2, ERN (En) 00231858.

[505] THACH Sokh Interview Record, E3/5230, 15 December 2008, p. 3, ERN (En) 00279242 (On 17 April 1975 the witness was evacuated from Pailin to Battambang); Refugee Accounts, E3/4590, pp. 305-306, ERN (En) 00820623-24 (On 26 April 1975, the Khmer Rouge ordered the entire population of Pailin, by means of a radio car, to leave the town and that each person should take only a few items); PRUM Sarun Interview Record, E3/5187, 18 June 2008, p. 2, ERN (En) 00274177 (a former LON Nol soldier and a farmer living at Krapeu Cheung village, noted that after 17 April 1975, the Khmer Rouge set up people's units and teams to perform labour, building dams and digging canals, such as the Kamping Puoy Dam. There were 90 people in his group including evacuees from Pailin, Phnom Penh and Kampong Cham).

[506] TAY Kimhuon Interview Record, E3/5257, 24 November 2008, p. 3, ERN (En) 00251014 (After taking Kampong Cham, the people were evacuated).

[507] T. 6 June 2013 (Sydney SCHANBERG), pp. 23-26 (Kampong Chhnang was 'evacuated' by 23 April 1975); CHAN Loeu Interview Record, E3/5233, 23 December 2008, pp. 2-3, ERN (En) 00279260-61 (On 17 April 1975, the witness, who lived at Taing Kruos Kaet Village, saw people who had been evacuated including from Kampong Chhnang); LOEUNG Kimchhong Interview Record, E3/5272, 11 February 2009, pp. 2-3, ERN (En) 00290655-56 (All the people of Kampong Chhnang Town were told by loudspeaker to leave).

Siem Reap,[508] Poipet,[509] Battambang[510] and Pursat.[511] The re-location of many people expelled from Phnom Penh and other towns was still on-going in August 1975.[512]

171. Beginning in September 1975 and continuing throughout 1977, at least 300,000 to 400,000 civilians were forcibly transferred to Battambang and Pursat Provinces, while more than 30,000 were forcibly re-located within regions depending on seasonal labour requirements and to advance the class struggle.[513] These movements were carried out under inhumane conditions leading to deaths. Some died of starvation, exhaustion or sickness while others disappeared.[514] Overall, during the temporal period at issue in Case 002/01, millions were forcibly displaced. The Chamber notes that the Closing Order also alleged that forcible displacement continued throughout 1978.[515]

172. Between 17 and 24 April 1975, Khmer Republic officials were targeted for execution, arrest and detention while cities and towns throughout the newly liberated areas of Cambodia, including Phnom Penh were emptied of their inhabitants.[516] On or around 25 or 26 April 1975, at least 250 former Khmer Republic officials were

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[508] T. 12 November 2012 (PE CHUY Chip Se), pp. 111-112 (After 17 April 1975, people were evacuated from Siem Reap at gun-point); CHEA Thy Interview Record, E3/5184, 17 June 2008, p. 5, ERN (En) 00225529 (All the people of Siem Reap were evacuated); MUY Moeun Interview Record, E3/5175, 3 June 2008, p. 2, ERN (En) 00272752 (On 5 May 1975, people were still being evacuated from Siem Reap, others had already been evacuated); TEM Kimseng Interview Record, E3/5248, 7 October 2008, pp. 2-4, ERN (En) 00235142-44 (After 17 April 1975, people were evacuated from Siem Reap).

[509] Refugee Accounts, E3/4590, p. 25, ERN (En) 00820343 (On 24 April, the Khmer Rouge ordered the evacuation of Poipet by microphone).

[510] T. 6 December 2012 (HUN Chhunly), pp. 74-75 (One week after the Khmer Rouge took control, Battambang was evacuated); MA Saem Interview Record, E3/5282, 28 March 2009, pp. 3-4, ERN (En) 00322023-4 (At the end of April 1975, Khmer Rouge soldiers evacuated Battambang Town); PEN Loeut Interview Record, E3/5226, 18 November 2008, pp. 2-3, ERN (En) 00250277-78 (Around 25 or 26 April 1975, armed Khmer Rouge soldiers evacuated people from Phnom Sampeou to rice fields outside the village, in Battambang Province); TES Heanh Interview Record, E3/505, 27 August 2008, pp. 2-3, ERN (En) 00275409-10 (Armed Khmer Rouge evacuated all the people of Battambang Town).

[511] T. 29 April 2013 (UNG Chhat), pp. 70-79 (Pursat was evacuated on 20 April 1975); T. 2 May 2013 (LIM Sat), pp. 14-16 (Following the liberation in 1975, people were all evacuated out of the provincial town of Pursat within three weeks or so) .

[512] *See* Section 10: Movement of the Population (Phase One); Section 11: Movement of the Population (Phase Two); *Revolutionary Flag*, E3/166, February-March 1976, p. 25, ERN (En) 00517837.

[513] *See* Section 11: Movement of the Population (Phase Two).

[514] *See* Section 11: Movement of the Population (Phase Two).

[515] Closing Order, paras 283-300 (Concerning the displacements identified in the Closing Order as population movement (phase three)).

[516] Section 11: Movement of the Population (Phase Two).

executed at Tuol Po Chrey.[517] This policy to target Khmer Republic officials continued thereafter with executions, arrests and disappearances reported throughout Cambodia.[518]

173. Meanwhile, according to the Closing Order, throughout the DK era (17 April 1975 to 6 January 1979), there were widespread killings, torture, rape, physical violence, forced marriages, forced labour, disappearances, and/or other instances of inhumane treatment, some of which were carried out on discriminatory grounds.[519] During the DK era, hundreds of thousands of Cambodians victimised by the Khmer Rouge regime sought refuge in Thailand, Vietnam and Laos.[520]

174. By 2008, the Documentation Center of Cambodia ("DC-Cam") had identified an estimated 1.3 million human remains in 390 mass grave sites spread throughout Cambodia.[521] Experts suggest that there is a high probability that those mass grave sites contain the remains of only a sample of those who died as a result of Khmer Rouge policies and actions during the DK era: it is likely that many grave sites have

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[517] Section 12: Tuol Po Chrey, para. 681.

[518] *See* Section 11: Movement of the Population (Phase Two); Section 14: Joint Criminal Enterprise.

[519] Closing Order, paras 302-860 (Concerning allegations of mistreatment and violence at security centres, execution sites, cooperatives and worksites and treatment of specific groups throughout Cambodia).

[520] Demographic Expert Report: *Khmer Rouge Victims in Cambodia, April 1975-January 1979: A Critical Assessment of Major Estimates*, E3/2413, 30 September 2009, p. 19, ERN (En) 00385262; T. 11 April 2013 (François PONCHAUD), pp. 57-58; Article by P. Heuveline: *'Between One and Three Million': Towards the Demographic Reconstruction of a Decade of Cambodian History (1970-79)*, E3/1799, 1998, p. 60, ERN (En) 00096735; French Ministry of Foreign Affairs Circular, Subject: Cambodian News, E3/2675, 1 December 1978, p. 12, ERN (En) 00752075.

[521] DC-Cam Document: *Burial*, E3/2763, 18 February 2008 (16 sites in Banteay Meanchey each with the remains of between 50 and 25,000 people; 19 sites in Battambang with the remains of between 30 and 20,000 people; 75 sites in Kampong Cham with the remains of between 10 and 32,690; 40 sites in Kampong Chhnang with the remains of between 10 and 150,000 people; 24 sites in Kampong Speu with the remains of between 10 and more than 30,000; 17 sites in Kampong Thom with the remains of between 1 and 150,000 people; 14 sites in Kampot with the remains of between 40 and 32,047 people; 29 sites in Kandal with the remains of between 10 and 35,027 people; 10 sites in Kratie with the remains of between 50 and 7,000 people; 1 site in Mondulkiri with the remains of about 200 people; 4 sites in Phnom Penh with the remains of between 10 and 15,000 people; 36 sites in Prey Veng with the remains of between 30 and more than 17,200 people; 17 sites in Pursat with the remains of between 100 and 15,000 people; 3 sites in Ratanakiri with the remains of between 40 and more than 1,000 people; 24 sites in Siem Reap with the remains of between 12 and 36,000 people; 8 sites in Kampong Som (Sihanoukville) with the remains of between 100 and 1,500 people; 4 sites in Stung Treng, one site containing the remains of 1,000 people; 18 sites in Svay Rieng with the remains of between 40 and 30,000 people; 31 in Takeo with the remains of between 1 and 40,000 people); Demographic Expert Report: *Khmer Rouge Victims in Cambodia, April 1975-January 1979: A Critical Assessment of Major Estimates*, E3/2413, 30 September 2009, p. 7, ERN (En) 00385250; *See also*, DC-Cam Document: *Mapping the Killing Fields of Cambodia, 1997: khet Kampong Thom*, E3/2648, 1997.

never been identified and that many who died were never buried.[522] Overall, estimates indicate that between 600,000 and 3 million died as a result of Khmer Rouge policies and actions. Within this range, experts accept estimates falling between 1.5 and 2 million excess deaths as the most accurate.[523]

4.1. Chapeau requirements for crimes against humanity listed in Article 5 of the ECCC law

175. Where relevant to Case 002/01, the Closing Order charges the Accused pursuant to Article 5 of the ECCC Law with the following crimes against humanity "committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds": (i) murder, (ii) extermination, (iii) political persecution, and (iv) other inhumane acts comprising (a) attacks against human dignity, (b) forced transfer and (c) enforced disappearances.[524]

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[522] Demographic Expert Report: *Khmer Rouge Victims in Cambodia, April 1975-January 1979: A Critical Assessment of Major Estimates*, E3/2413, 30 September 2009, p. 12, ERN (En) 00385255.

[523] T. 25 July 2012 (David CHANDLER), pp. 9-12 (the consensus is that between 1.5 and 3 million people died under the Khmer Rouge); T. 10 April 2013 (François PONCHAUD), pp. 75-76 (in 1986, PONCHAUD estimated that 800,000 people were killed during the DK regime, CIA were estimating that 1.4 million people were killed and other embassies were estimating that 1 million people were killed); Article by P. HEUVELINE: *The Unbearable Certainty of Numbers: Estimating the Death Toll of the Khmer Rouge Period*, E3/1798, Nov-Dec 1998, p. 10, ERN (En) 00291624 (After reviewing various estimates, determining that the central interval, 1.5 to 2.5 million excess deaths, is most probable); Article by P. HEUVELINE: '*Between One and Three Million': Towards the Demographic Reconstruction of a Decade of Cambodian History (1970-79)*, E3/1799, 1998, p. 60, ERN (En) 00096735 (Heuveline estimates that there were 1.5 to 2 million excess deaths in 1975-1978, and states that, in his reconstruction, at least 600,000, and possibly as many as 2 million, deaths, cannot be accounted for by either a general decline in life expectancy or by the mortality due to the war prior to 1975); Article by B. SHARP: *Counting Hell*, E3/1801, undated, p. 24, ERN (En) 00078288 (After reviewing other experts' figures, SHARP identifies a range of 1.747 million to 2.459 million deaths due to Khmer Rouge policies and actions; SHARP considers the midpoint of the range being 2.12 million "falls fairly close to the most likely figure"); Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, 1984, pp. 200-201, ERN (En) 00397115-16 (M. VICKERY estimated that 740,800 deaths were caused by the special conditions during the DK. He estimated that more than half were caused by hunger, exhaustion and illness and about 300,000 people were executed. He suggested that more accurate estimates were impossible and that it was impossible to project a figure of 1-2 million executions based on the data available in 1984); Demographic Expert Report: *Khmer Rouge Victims in Cambodia, April 1975-January 1979: A Critical Assessment of Major Estimates*, E3/2413, 30 September 2009, pp. 15-19, 64-70, ERN (En) 00385258-62, 00385326-32 (Excess death estimates published between 1980 and 1993 consistently approach one million, except VICKERY who suggested 740,000. Later estimates made between 1995 and 2009 range from 1.4 million to 2.2 million. After reviewing all these estimates, the authors accepted that the interval of 1.747 to 2.2 million deaths under the Khmer Rouge is the most likely range and determined that earlier estimates heavily underestimated the scale of actual killing by the Khmer Rouge).

[524] Closing Order, paras 1373, 1375, 1377, 1379-1380 (murder); 1381, 1387-1389 (extermination); 1415-1418, 1423-1425 (political persecution); 1434-1436, 1439-1440 (other inhumane acts, attacks

4.1.1. ***Law***

176. As previously held by this Chamber and affirmed by the Supreme Court Chamber, crimes against humanity have been established international crimes since the Nuremberg Charter and formed part of customary international law during the period of the ECCC's temporal jurisdiction.[525] Therefore charges of crimes against humanity pursuant Article 5 of the ECCC Law accord with the principle of legality,[526] subject to an additional finding that charged offences or modes of responsibility were "sufficiently foreseeable and that the law providing for such liability [was] sufficiently accessible [to the accused] at the relevant time."[527] Such analysis is to be conducted at the level of the underlying crime or mode of liability, rather than for the category of crimes against humanity as a whole.

177. Offences listed in Article 5 of the ECCC Law constitute crimes against humanity only if the following *chapeau* requirements are established: (i) there is an attack; (ii) that is widespread or systematic; (iii) and directed against any civilian population; (iv) on national, political, ethnical, racial or religious grounds; (v) there is a nexus between the acts of the direct perpetrator and the attack; and (vi) the accused or the perpetrator has the requisite knowledge.[528] The Chamber has held previously that the definition of crimes against humanity under customary international law in 1975 no longer requires a nexus to armed conflict.[529] Consequently, the Chamber

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against human dignity); 1448-1469 (other inhumane acts, forced transfer); 1470-1478 (other inhumane acts, enforced disappearances). As concerns murder, *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional crime Sites within the Scope of Trial in Case002/01 (E163), E124/7.3, pp. 2-3.

[525] *KAING Guek Eav* Trial Judgement, paras 283-289; *KAING Guek Eav* Appeal Judgement, paras 100-104.

[526] *KAING Guek Eav* Trial Judgement, paras 283-296; *KAING Guek Eav* Appeal Judgement, paras 100-104.

[527] *KAING Guek Eav* Appeal Judgement, para. 96, citing *Ojdanić* Jurisdiction Appeal Decision (Joint Criminal Enterprise), paras 21, 37.

[528] *KAING Guek Eav* Appeal Judgement, para. 106; *KAING Guek Eav* Trial Judgement, para. 297.

[529] *KAING Guek Eav* Trial Judgement, paras 291-292; Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/8, 26 October 2011, para. 33.

dismisses the argument to the contrary advanced by the Accused.[530]

178. *Attack* - An attack is a course of conduct involving the commission of a series of acts of violence.[531] It is not limited to the use of armed force, encompassing any mistreatment of the civilian population including that reflected by the underlying offences in Article 5 of the ECCC law.[532] An attack on a civilian population is a separate concept from that of an armed conflict.[533] An attack may precede, outlast or continue through an armed conflict, without necessarily being part of it.[534]

179. *Widespread or systematic* - The term "widespread" refers to the large-scale nature of the attack and the number of victims, while the term "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.[535] A systematic attack is commonly expressed as a pattern of crimes involving the non-accidental repetition of similar criminal conduct on a regular basis.[536] A widespread attack may refer either to the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."[537] Proof that the attack was either "widespread" or "systematic" is sufficient to establish liability.[538] Only the attack, not the individual acts for which the accused is responsible, must be widespread or systematic.[539] A single act or a limited number of acts can qualify as a crime against humanity provided that they are not isolated or random and all other conditions are met.[540]

180. The KHIEU Samphan Defence submits that the *actus reus* of crimes against humanity also requires the existence of a State or organisational plan or policy.[541] The NUON Chea Defence similarly submits that the existence of a state policy or plan was

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[530] [KHIEU Samphan] Submissions Regarding the Applicable Law, E163/5/9, 18 January 2013, para. 8; NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 214 (adopting IENG Sary's submissions).
[531] *KAING Guek Eav* Trial Judgement, para. 298; *Nahimana et al*. Appeal Judgement, para. 918.
[532] *KAING Guek Eav* Trial Judgement, para. 298; *Kunarac et al.* Appeal Judgement, para. 86.
[533] *KAING Guek Eav* Trial Judgement, para. 299; *Tadić* Appeal Judgement, para. 251.
[534] *KAING Guek Eav* Trial Judgement, para. 299; *Kunarac et al.* Appeal Judgement, para. 86.
[535] *KAING Guek Eav* Trial Judgement, para. 300; *Kunarac et al.* Appeal Judgement, para. 94.
[536] *Blaškić* Appeal Judgement, para. 101.
[537] *KAING Guek Eav* Trial Judgement, para. 300; *Blaškić* Trial Judgement, para. 206.
[538] *KAING Guek Eav* Trial Judgement, para. 300; *Kunarac et al.* Appeal Judgement, para. 93.
[539] *KAING Guek Eav* Trial Judgement, para. 301; *Kordić and Čerkez* Appeal Judgement, para. 94.
[540] *Kordić and Čerkez* Appeal Judgement, para. 94.
[541] Submissions Regarding the Applicable Law, 18 January 2013, E163/5/9, paras 10, 12, 68.

a requirement under customary international law for crimes against humanity at the time relevant to the Closing Order.[542] It further submits that international jurisprudence to the contrary "dating from the 2000s" is irrelevant in determining the state of the law at the time relevant to the Closing Order.[543]

181. In the *KAING Guek Eav* Trial Judgement, this Chamber found that while the existence of a policy or plan may be evidentially relevant in establishing the widespread or systematic nature of the attack, it does not constitute an independent legal element of the crime.[544] While this position accorded with post-1975 jurisprudence from other international tribunals,[545] it was based upon a review of customary international law sources relevant to the operative time period. These sources set out contrasting views on the issue. While the Defence has identified certain sources which support their legal argument,[546] there is also support for the view previously advanced by this Chamber in the *KAING Guek Eav* Trial Judgement,[547] necessitating the conclusion that state practice and *opinio juris* at that time did not clearly support a State or organisational plan or policy requirement. As no error has been demonstrated, the Chamber dismisses both challenges.

182. *Directed against any civilian population* - The attack must be "directed against" any civilian population, meaning that such population must be the primary,

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[542] NUON Chea Closing Submissions in Case 002/01, paras 210-213.
[543] NUON Chea Closing Submissions in Case 002/01, para. 213.
[544] *KAING Guek Eav* Trial Judgement, para. 301.;
[545] *See e.g. Blaškić* Appeal Judgement, para. 120; *Kunarac* Appeal Judgement, para. 98 fn. 114; *Gacumbitsi* Appeal Judgement, para. 84; *Sesay* Trial Judgement, para. 79.
[546] The following sources raised by the defence teams consider a State plan or policy to be a legal requirement of crimes against humanity: *Justice* Judgement, pp. 973, 984; *Eichmann* Judgement, paras 56-88; Report of the International Law Commission covering the work of its sixth session, 3 June – 28 Julu 1954, UN Doc. A/2693, Article 2. While the *Menten* Judgement does not require State involvement, it does require that crimes against humanity "form part of a system based on terror or constitute a link in a consciously pursued policy" (*see* pp 362-363). The Chamber is not persuaded that the other sources identified by the NUON Chea Defence support the existence of an independent State plan or policy requirement. The reference in the IMT Judgement to a "policy of terror [and] persecution […] in Germany" (*see* p. 498) sets out findings on the facts, not a legal requirement. The *Einsatzgruppen* Judgement suggests only that crimes against humanity arise where a State fails to take action to halt or punish crimes, for any reason (*see* p. 498).
[547] Sources which do not identify a State or organisational plan or policy as a legal requirement of crimes against humanity include: Tokyo Charter, Article 5; Control Council Law No. 10, Article II(c); *Flick* Judgement, pp. 1191, 1212-1216; *Medical* Judgement, pp. 172-173; *Milch* Judgement, Musmanno Concurrence, pp. 790-791; *Milch* Judgement, Phillips Concurrence, pp. 863-4; *RuSHA* Judgement, p. 151; *High Command* Judgement, p. 469; *Hostage* Judgement, p. 1232; *Ministries* Judgement, p. 653-654, 797, 877; *Farben* Judgement, pp. 1129-1130.

as opposed to incidental, target of the attack.[548] It is not necessary to show that the entire population of the relevant geographical entity was subject to the attack.[549] It is sufficient that enough individuals were targeted in the course of the attack or that they were targeted in such a way as to satisfy the Trial Chamber that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[550]

183. To qualify as a "civilian population" for the purposes of Article 5 of the ECCC Law, the target population must be of a predominantly civilian nature.[551] The presence within the civilian population of individuals who do not come within the definition of civilians does not necessarily deprive the population of its civilian character.[552] The civilian status of the victims, the number of civilians, and the proportion of civilians within a population are factors relevant to the determination of whether the requirement that an attack be directed against a "civilian population" is fulfilled.[553]

184. Where an attack is carried out in a geographical area that contains both civilians and soldiers, other factors may be relevant to determining whether the attack was directed at a "civilian population". These include the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, and the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.[554]

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[548] *KAING Guek Eav* Trial Judgement, paras 305, 308; *Kunarac et al.* Appeal Judgement, paras 91–92.
[549] *Kunarac et al.* Appeal Judgement, para. 90.
[550] *KAING Guek Eav* Trial Judgement, paras 302-303, 305; *Kordić and Čerkez* Appeal Judgement, para. 95.
[551] *KAING Guek Eav* Trial Judgement, para. 305; *Dragomir Milošević* Appeal Judgement, paras 50-51.
[552] *KAING Guek Eav* Trial Judgement, paras 305-306, relying on Article 50(3) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts; *Mrkšić and Šljivančanin* Appeal Judgement, para. 31. *See also, Galić* Appeal Judgement, paras 136-138.
[553] *KAING Guek Eav* Trial Judgement, para. 305; *Mrkšić and Šljivančanin* Appeal Judgement, paras 32-33, 36.
[554] *KAING Guek Eav* Trial Judgement, para. 309; *Mrkšić and Šljivančanin* Appeal Judgement, para. 30.

185. In determining whether a population may be considered to be 'civilian', the Chamber notes that there was no established definition of civilian under customary international law in April 1975. The ordinary meaning of the term "civilian" (in English) and "*civil*" (in French) encompasses persons who are not members of the armed forces. On this basis, the Chamber holds that at the time relevant to the charges here at issue, the civilian population included all persons who were not members of the armed forces or otherwise recognised as combatants. While the Chamber does not here rely on the definition of "civilian" set out in Article 50 of Additional Protocol I to the 1949 Geneva Conventions, adopted by the *ad hoc* Tribunals as reflecting customary international law for the purposes of crimes against humanity post-1977,[555] it notes that this accords with the ordinary meaning of the term.[556]

186. In determining civilian or non-civilian status of a person, the specific situation of the individual at the time of the crimes may not be determinative. A member of an armed organisation is not accorded civilian status by reason of the fact that he or she is not armed or in combat at the time of the commission of the crimes.[557] Accordingly, soldiers *hors de combat* do not qualify as 'civilians' for the purposes of Article 5 of the ECCC Law.[558] As a general presumption, the armed law enforcement agencies of a State are considered to be civilians for purposes of international humanitarian law.[559] A person shall be considered to be a civilian for as long as there is doubt as to his or her status.[560]

187. Where the civilian population is the object of an attack, "there is no requirement nor is it an element of crimes against humanity that the *victims* of the underlying crimes be civilians."[561] Thus, a soldier who is *hors de combat* may be the victim of an act amounting to a crime against humanity, provided that all other

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[555] *Blaškić* Appeal Judgement, paras 110-113. Article 50 of Additional Protocol I refers also to Article 43 of Additional Protocol I and Article 4A of the Third Geneva Convention.
[556] *Martić* Appeal Judgement, para. 297.
[557] *KAING Guek Eav* Trial Judgement, para. 304; *Blaškić* Appeal Judgement, para. 114.
[558] *KAING Guek Eav* Trial Judgement, para. 304; *Mrkšić and Šljivančanin* Appeal Judgement, para. 35.
[559] *KAING Guek Eav* Trial Judgement, para. 304; *Sesay* Trial Judgement, para. 87.
[560] *KAING Guek Eav* Trial Judgement, para. 304; *Blaškić* Appeal Judgement, para. 111.
[561] *KAING Guek Eav* Trial Judgement, para. 311, referring to *Mrkšić and Šljivančanin* Appeal Judgement, para. 32.

necessary conditions are met.[562] Further, the reference to "any" civilian population does not require a demonstration that victims were linked to a particular group.[563] Crimes against humanity may include a state's attack on its own population.[564]

188. *National, political, ethnical, racial or religious grounds* – Article 5 of the ECCC Law requires that the attack must have been carried out against the civilian population on a discriminatory basis, namely on national, political, ethnical, racial or religious grounds. This is a jurisdictional requirement that narrows the scope of the ECCC's jurisdiction over crimes against humanity when compared with customary international law applying between 1975 and 1979.[565] The requirement qualifies the nature of the broader attack rather than the individual underlying offences, and consequently does not import a discriminatory intent as a legal ingredient for all underlying crimes against humanity, as this would otherwise render redundant the express reference to discrimination within the offence of persecution in Article 5 of the ECCC Law.[566]

189. Jurisprudence concerning the crime of persecution defines an act as discriminatory when a victim is targeted because of his or her membership, or imputed membership, in a political, racial or religious group defined by the perpetrator.[567] The targeted group "may be defined broadly by the perpetrator such that they are characterised in negative terms and include close affiliates or sympathisers …".[568] This approach is equally applicable to defining a discernible group targeted by an attack.

190. *Nexus between the acts of the direct perpetrator and the attack* – The acts of the direct perpetrator must be part of the attack, meaning that the acts in question must

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562 *KAING Guek Eav* Trial Judgement, para. 311; *Martić* Appeal Judgement, paras 309-313.
563 *KAING Guek Eav* Trial Judgement, para. 312; *Kunarac et al.* Trial Judgement, para. 423.
564 *KAING Guek Eav* Trial Judgement, para. 312; *Kunarac et al.* Trial Judgement, para. 423.
565 *KAING Guek Eav* Trial Judgement, paras 313-314. Article 3 of the ICTR Statute provides for a similar discriminatory requirement, adjudged by that Tribunal to be a jurisdictional requirement and not one required by customary international law: *Akayesu* Appeal Judgement, para. 465.
566 *KAING Guek Eav* Trial Judgement, paras 313-314, 379; *KAING Guek Eav* Appeal Judgement, para. 238; *Akayesu* Appeal Judgement, paras 461, 464.
567 *KAING Guek Eav* Trial Judgement, para. 317; *Kordić and Čerkez* Appeal Judgement, para. 674.
568 *KAING Guek Eav* Appeal Judgement, para. 272.

by their very nature or consequences be objectively part of the attack.[569] A crime that is committed before, after or away from the main attack on the civilian population could still, if sufficiently connected, be part of that attack. The crime must not, however, be an isolated act, i.e. so far removed from the attack that, having considered the context and circumstances in which it was committed, the acts cannot be said to have been part of the attack.[570]

191. *Knowledge*. An accused or a perpetrator must have known that there is an attack on the civilian population and that his or her acts formed part of the attack.[571] He or she need not know the details of the attack or share the purpose or goals of the broader attack.[572] Evidence of knowledge depends on the facts of a particular case; as a result, the manner in which this legal element may be proved may vary according to the circumstances.[573]

192. The NUON Chea Defence submits that there is a requirement additional to those set out above, namely that an accused must have knowledge of the discriminatory nature of any widespread and systematic attack forming the basis of charges against him or her.[574] They do not advance any authority in support of this assertion. As the ICTR Statute is the only instrument other than the ECCC Law to include the jurisdictional requirement that the attack must have been carried out on a discriminatory basis, ICTR jurisprudence provides useful guidance on this issue. The Chamber's review of ICTR case law reveals that, almost uniformly,[575] the ICTR has not required an accused to have knowledge of the discriminatory nature of the widespread and systematic attack.[576] Similarly, in the *KAING Guek Eav* Trial Judgement, the Chamber did not require knowledge of the discriminatory nature of

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[569] *KAING Guek Eav* Trial Judgement, para. 318; *Kunarac et al.* Appeal Judgement, para. 85; *Šainović et al.* Appeal Judgement, para. 264.
[570] *KAING Guek Eav* Trial Judgement, para. 318; *Kunarac et al.* Appeal Judgement, para. 100.
[571] *Kunarac et al.* Appeal Judgement, para. 85; *Munyakazi* Appeal Judgement, para. 141.
[572] *KAING Guek Eav* Trial Judgement, para. 319; *Kunarac et al.* Appeal Judgement, paras 102-103.
[573] *KAING Guek Eav* Trial Judgement, para. 319; *Blaškić* Appeal Judgement, para. 126.
[574] NUON Chea Closing Submissions in Case 002/01, para. 208.
[575] The ICTR Trial Chamber in *Ntakirutimana* did require knowledge of the discriminatory nature of the widespread and systematic attack, para. 693.
[576] *See e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 389; *Gacumbitsi* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Trial Judgement, paras 133-134; *Seromba* Trial Judgement, para. 360; *Kamuhanda* Trial Judgement, paras 657-6; *Semanza* Trial Judgement, paras 327-332.

the attack.[577] The Chamber finds that such knowledge is not a requirement of crimes against humanity before the ECCC and accordingly rejects this submission.

4.1.2. ***Legal Findings***

193. The Chamber is satisfied that beginning by 17 April 1975 and continuing at least until December 1977, the temporal period at issue in Case 002/01, there was a widespread and systematic attack against the civilian population of Cambodia. The attack took many forms, including forced transfer, murder, extermination, enforced disappearance and persecution.[578] This attack victimised millions of civilians throughout Cambodia and resulted in a large number of refugees fleeing to neighbouring countries.[579] The attack was carried out in furtherance of, and pursuant to, Party policies and plans to build socialism and defend the country.[580] The Chamber is satisfied that the attack was widespread in both its geographical scope and number of victims. The Chamber also finds that the attack was systematic insofar as crimes of such scope and magnitude could not have been random and were carried out repeatedly and deliberately in furtherance of, and pursuant to, Party policies.

194. The Chamber finds that this attack was directed against the civilian population of Cambodia. The armed conflict between the Khmer Republic and Khmer Rouge ended on 17 April 1975 when the Khmer Rouge captured Phnom Penh and the Khmer Republic forces surrendered.[581] Thereafter, all Khmer Republic soldiers not taking a direct part in hostilities were civilians or, at minimum, *hors de combat*, thereby enjoying the same protections as civilians. In any event, former Khmer Republic soldiers only formed part of the millions of civilians attacked.[582]

195. The Chamber further finds that the attack against the civilian population was carried out on political grounds, pursuant to the plans and policies of the Party to build socialism and defend the country. In order to accomplish this goal, the Party

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[577] *KAING Guek Eav* Trial Judgement, para. 319.
[578] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, paras 169-173.
[579] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, paras 169-173.
[580] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 724-738, 742-743, 777, 804-805, 835.
[581] *See* Section 10: Movement of the Population (Phase One), paras 460, 501-502.
[582] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, paras 170-172.

considered that the feudalist and capitalist classes had to be eliminated.[583] These 'New People' were perceived as political and social enemies of the revolution and the collective system.[584] Further, all Cambodians were to be part of the revolution and the collective system.[585] Any who opposed, or were perceived to oppose, the revolution and collective system were targets for mistreatment and acts of violence.[586] The Chamber is therefore satisfied that the attack was carried out on political grounds.

196. According to the Closing Order, parts of the attack also targeted Buddhists, the Chams and the Vietnamese on the basis of their nationality, ethnicity, race and/or religion.[587] These portions of the attack fall outside the scope of Case 002/01. Having already determined that the widespread attack was carried out against the civilian population on political grounds, the Chamber therefore declines to make findings as to whether parts of the attack were also done on national, ethnical, religious and/or racial grounds, as this will be examined in future trials.

197. The Chamber is further satisfied that there is a nexus between the acts of the Accused and the attack. The acts of the direct perpetrators and the Accused during movement of population (phases one and two) and during executions of former Khmer Republic officials at Tuol Po Chrey were committed between 17 April 1975 and December 1977 and were done pursuant to, and in furtherance of, the Party's policies and plans to defend and build socialism.[588] Finally, considering the scale and scope of the attack[589] and the fact that it was undertaken in furtherance of, and pursuant to, Party policies and plans,[590] the Chamber is satisfied that both the direct

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583 *See* Section 3: Historical Background, para. 113; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 726, 731, 788, 815.

584 *See* Section 3: Historical Background, paras 117-118; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, para. 726.

585 *See* Section 3: Historical Background, fn. 318; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, para. 724.

586 *See* Section 3: Historical Background, paras 117-118, 120, 123; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 814-818.

587 Closing Order, para. 1369.

588 *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 10: Movement of the Population (Phase One), paras 547-574; Section 11: Movement of the Population (Phase Two), paras 630-657; Section 12: Tuol Po Chrey, paras 682-687; Section 13: Individual Criminal Responsibility, paras 690-702 .

589 *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, paras 169-173.

590 *See* Section 3: Historical Background, paras 104, 111-112, 116-118; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 777-778, 804-810, 835-837.

perpetrators and the Accused knew of the attack on the civilian population and that their acts formed part of this attack.

198. The Chamber is thus satisfied that all the chapeau requirements for the application of Article 5 of the ECCC Law are met.

5. ADMINISTRATIVE STRUCTURES

5.1. Structure of the CPK

199. The precise operational structure of the CPK was shrouded in secrecy.[591] In the early days of the Party, secrecy was essential to its survival as an underground revolutionary movement.[592] Even after the CPK rose to power in 1975, however, it continued to obfuscate and obscure its internal workings, largely to protect itself from perceived external enemies.[593] Limited, if any, information about the leadership structure was accessible to ordinary people, who were often simply required to obey without question decisions made by '*Angkar*' (literally 'organisation'), an anonymous entity seen as having the power to control the whole of society.[594] Lower-ranking cadres sometimes had only a cursory understanding of the organisation of power in the CPK.[595] This policy of secrecy undoubtedly accounted for some of the confusion and contradiction within the testimony of witnesses who appeared before the Trial Chamber.[596] In its totality, however, the evidence put before the Chamber has enabled it to reconstruct the organisational lines of the CPK in the relevant period.

200. The administrative structure of the CPK was formalised for the first time in a statute passed by the First Party Congress of what was then called the Worker's Party of Cambodia in September-October 1960.[597] It is likely that a second statute was adopted at the Third Party Congress in or around August 1971.[598] In any event,

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[591] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 27, ERN (En) 00762399; T. 30 May 2012 (NY Kan), p. 60; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 7, ERN (En) 00156747; T. 14 August 2012 (SUONG Sikoeun), p. 92; T., 26 March 2012 (KAING Guek Eav), p. 39.

[592] T. 6 May 2013 (Philip SHORT), pp. 85-86.

[593] T. 6 May 2013 (Philip SHORT), pp. 88-89; T. 20 July 2012 (David CHANDLER), p. 95.

[594] T. 6 December 2011 (KLAN Fit), p. 79; T. 20 July 2012 (David CHANDLER), pp. 97-98; DUCH Phleu Interview Record, E3/5213, 28 August 2008, p. 3, ERN (En) 00275433 ("Whatever Angkar had them do, they had to obey. I did not know who Angkar was"); TAN Wardeny Interview Record, E3/102, 11 June 2009, p. 3, ERN (En) 00345537 ("everyone used to say that it was 'Angkar' who decided, but we did not know who 'Angkar' was"). *See also*, Section 5: Administrative Structures, para. 221.

[595] *See e.g.* T. 17 May 2012 (PEAN Khean), pp. 103-104; T. 28 May 2012 (NY Kan), p. 22; T. 6 August 2012 (SUONG Sikoeun), p. 65.

[596] *See e.g.* Section 5: Administrative Structures, para. 207.

[597] *Revolutionary Flag*, E3/10, September-October 1976, p. 6, ERN (En) 00450506; T. 21 March 2012 (KAING Guek Eav), p. 70; T. 6 December 2011 (NUON Chea), p. 25; *Revolutionary Youth*, E3/768, March 1977, p. 12, ERN (En) 00525948. *See* Section 3: Historical Background, para. 87.

[598] T. 21 March 2012 (KAING Guek Eav), p. 70. *See* Section 3: Historical Background, para. 95.

another statute was enacted at the Fourth Party Congress in January 1976.[599] Only the last of these was put before the Trial Chamber,[600] but according to Witness KAING Guek Eav, the various statutes were similar in content, at least insofar as they dealt with the internal structures and hierarchy of the CPK.[601]

5.1.1. *Party Congress*

201. The 1976 statute ("CPK Statute") set out the lines along which the Party was officially organised. The "highest power rights throughout the country" were vested in the General Conference, or Party Congress.[602] The role of the Congress was to "designate the political line and Statute" of the Party and select and appoint the members of the Central Committee.[603] In addition to the First, Second, Third and Fourth Party Congresses mentioned above, a Fifth Party Congress was convened in late 1978.[604] The 1976 and 1978 Congresses were attended by hundreds of people, including representatives from all Sectors and military Divisions, as well as the CPK Central Committee members.[605]

5.1.2. *Central Committee and Standing Committee*

202. The CPK Statute provided that between Party Congresses, the Central Committee was nominally the "highest operational unit throughout the country".[606] In principle, the Central Committee was responsible for implementing the Party line and Statute throughout the CPK; for instructing Zone-level, Sector-level and other Party organisations "to carry out activities according to the political line and [the Party's]

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599 T. 11 July 2013 (Stephen HEDER), p. 19; T. 21 March 2012 (KAING Guek Eav), pp. 70-71, 73; Written Record of Analysis by Craig ETCHESON, E3/494, 18 July 2007, p. 3, ERN (En) 00142828.

600 CPK Statute, E3/130, undated.

601 T. 26 March 2012 (KAING Guek Eav), p. 11; T. 10 April 2012 (KAING Guek Eav), pp. 81-82. *See also,* Unattributed Article: *Brief History of Khmer Communist Party*, E3/2, undated, p. 5, ERN (En) 00444352 (indicating that the 1960 statute "established an eight-man party central committee"); T. 10 January 2012 (NUON Chea), pp. 23-25 (acknowledging the existence of CPK central and standing committees from 1960 onwards).

602 CPK Statute, E3/130, undated, p. 17, Article 7, ERN (En) 00184038; T. 6 May 2013 (Philip SHORT), p. 60 (clarifying that 'General Conference' and 'Party Congress' are synonymous).

603 CPK Statute, E3/130, undated, Article 21, p. 23, ERN (En) 00184044.

604 T. 11 June 2012 (SAO Sarun), p. 17; T. 6 May 2013 (Philip SHORT), p. 60; LONH a.k.a. LORN Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 58, ERN (En) 00170749.

605 T. 11 June 2012 (SAO Sarun), pp. 20-24; T. 11 January 2013 (CHHAOM Se), pp. 56, 68-69.

606 CPK Statute, E3/130, undated, p. 17, Article 7, ERN (En) 00184038.

ideological and organizational principles"; for governing and arranging cadres and Party members; and for communicating with fraternal "Marxist-Leninist" parties.[607] The Central Committee met at least every six months, as required by the CPK Statute.[608] The identity and number of members changed repeatedly between 1960 and 1979, but at its peak in the 1970s the Central Committee comprised between 20 and 30 people.[609] Members included TOU Samuth, who served as CPK Secretary from 1960 until his disappearance in 1962;[610] POL Pot, who joined the Central Committee upon its formation in 1960 and took over the post of CPK Secretary in 1963;[611] NUON Chea, who was elected to the Central Committee as CPK Deputy Secretary in 1960;[612] and KHIEU Samphan, who joined the Central Committee as a candidate member in 1971 and became a full-rights member in 1976.[613] According to the CPK Statute, candidate members could "participate in Central Committee meetings, but [had] no decision rights".[614]

203. Although the CPK Statute vested the highest level of operational authority in the Central Committee, effective control over the CPK was ultimately exercised by an extra-statutory body known as the Standing Committee.[615] The Standing Committee came into existence at the same time as the Central Committee in 1960.[616] It met approximately every seven to 10 days, or more frequently if the circumstances so

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[607] CPK Statute, E3/130, undated, p. 24, Article 23, ERN (En) 00184045.

[608] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750; CPK Statute, E3/130, undated, p. 24, Article 25, ERN (En) 00184045.

[609] T. 24 July 2012 (David CHANDLER), p. 138; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 59, ERN (En) 00170750; T. 26 April 2012 (SALOTH Ban), p. 2.

[610] T. 5 December 2011 (NUON Chea), p. 74; T. 20 July 2012 (David CHANDLER), p. 62.

[611] T. 10 January 2012 (NUON Chea), p. 22; T. 5 December 2011 (NUON Chea), p. 75.

[612] T. 5 December 2011 (NUON Chea), pp. 73-74; T. 6 May 2013 (Philip SHORT), pp. 77-78. *See* Section 7: Roles and Functions – Nuon Chea, paras 313, 315.

[613] T. 13 December 2011 (KHIEU Samphan), p. 92; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 15 July 2013 (Stephen HEDER), p. 43; T. 10 April 2012 (KAING Guek Eav), p. 73; T. 26 April 2012 (SALOTH Ban), p. 3. *See* Section 8: Roles and Functions – Khieu Samphan, para. 363.

[614] CPK Statute, E3/130, undated, p. 24, Article 24, ERN (En) 00184045.

[615] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750; T. 24 July 2012 (David CHANDLER), pp. 127-128; T. 6 May 2013 (Philip SHORT), p. 61; T. 28 March 2012 (KAING Guek Eav), p. 22.

[616] T. 22 November 2011 (NUON Chea), p. 82; T. 5 December 2011 (NUON Chea), pp. 74-75; T. 10 January 2012 (NUON Chea), pp. 23-25; T. 6 May 2013 (Philip SHORT), p. 63.

required.[617] It comprised seven members, all of whom were drawn from the Central Committee.[618] As with the Central Committee, membership of the Standing Committee was reshuffled from time to time.[619] POL Pot, IENG Sary, SAO Phim and NUON Chea were members of the Standing Committee from its inception.[620] Ta Mok joined in 1963.[621] SON Sen *alias* Khieu was a candidate or alternate (as opposed to full-rights) member of the Standing Committee,[622] and SOK Thuok *alias* VORN Vet was either a full-rights or a candidate member.[623] SUA Vasi *alias* Doeun and KHIEU Samphan were never formally members of the Standing Committee, but they both attended a number of its meetings.[624] Standing Committee meetings could be (and often were) convened in the absence of one or more Committee members.[625]

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[617] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750. *See also*, Standing Committee Minutes, E3/221, 14 May 1976; Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/223, 17 May 1976 (indicating that meetings were sometimes held in close succession).

[618] T. 24 July 2012 (David CHANDLER), p. 120; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 27 March 2012 (KAING Guek Eav), p. 73; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 58, ERN (En) 00170749.

[619] T. 30 January 2012 (NUON Chea), p. 39.

[620] T. 5 December 2011 (NUON Chea), pp. 74-75; T. 10 January 2012 (NUON Chea), pp. 22, 24; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 18 July 2012 (David CHANDLER), p. 32.

[621] T. 10 January 2012 (NUON Chea), p. 24.

[622] T. 6 May 2013 (Philip SHORT), p. 68; T. 27 March 2012 (KAING Guek Eav), p. 72; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 58, ERN (En) 00170749.

[623] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 27 March 2012 (KAING Guek Eav), p. 72; Report by S. HEDER and M. MATSUSHITA: Interviews with Kampuchean Refugees at Thai-Cambodia Border, E3/1714, February-March 1980, p. 58, ERN (En) 00170749. *See also*, Book by D. CHANDLER: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 21, ERN (En) 00192700 (giving VORN Vet's real name as SOK Thuok).

[624] Of the 23 sets of minutes of Standing Committee meetings put before the Chamber, 19 contain lists of those attending the meetings, 16 record KHIEU Samphan *alias* Hem as being present, and 12 record SUA Vasi *alias* Doeun as being present: *see* Standing Committee Minutes, E3/182, 9 October 1975; Standing Committee Minutes, E3/197, 11-13 March 1976; Standing Committee Report, E3/216, 20-24 August 1975; Standing Committee Minutes, E3/217, 11 March 1976; Standing Committee Minutes, E3/218, 26 March 1976; Standing Committee Minutes, E3/219, 3 May 1976; Standing Committee Minutes, E3/220, 7 May 1976; Standing Committee Minutes, E3/221, 14 May 1976; Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/223, 17 May 1976; Standing Committee Minutes, E3/224, 30 May 1976; Standing Committee Minutes, E3/225, 1 June 1976; Standing Committee Minutes, E3/226, 10 June 1976; Standing Committee Minutes, E3/227, 2 November 1975; Standing Committee Minutes, E3/228, 9 January 1976; Standing Committee Minutes, E3/229, 22 February 1976; Standing Committee Minutes, E3/230, 22 February 1976; Standing Committee Minutes, E3/231, 8 March 1976; Standing Committee Minutes, E3/232, 8 March 1976; Standing Committee Minutes, E3/233, 13 March 1976; Standing Committee Minutes, E3/235, 21 April 1976; Standing Committee Minutes, E3/237, 10 March 1976; and Standing Committee Minutes, E3/238, 28 February 1976. *See also*, Section 8: Roles and Functions – Khieu Samphan, para. 351, fn. 1052 confirming that KHIEU Samphan went by the *alias* 'Hem'. *See also*, T.

5.1.3. *Military Committee*

204. The Military Committee was another extra-statutory sub-committee of the Central Committee. The Military Committee was chaired by POL Pot and was responsible for military and security affairs.[626] SON Sen was also a member of the Military Committee.[627] Although the Closing Order alleges that NUON Chea was a member of the Military Committee, the Chamber is not satisfied on the available evidence that this has been demonstrated.[628]

5.1.4. *Party Centre*

205. Several of the witnesses and experts who testified before the Chamber used the phrase 'Party Centre' to refer to the senior leadership tier of the CPK. However, as Witness Stephen HEDER pointed out, 'Party Centre' was a nebulous term: sometimes it was used in a collective sense to describe an entire "level within the Party hierarchy", and sometimes it was used to designate a specific entity or body within the upper echelon of the CPK (such as the Central Committee, the Standing Committee or one of its connected offices, or even POL Pot himself).[629] The phrase 'Party Centre' also appeared in a number of documents put before the Chamber, including both DK-era documents and subsequent academic commentaries, generally

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27 March 2012 (KAING Guek Eav), p. 73; T. 8 May 2013 (Philip SHORT), p. 2; Report by S. HEDER and M. MATSUSHITA: Interviews with Kampuchean Refugees at Thai-Cambodia Border, E3/1714, February-March 1980, p. 58, ERN (En) 00170749.

[625] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751. *See also*, Section 5: Administrative Structures, fn. 624.

[626] T. 11 January 2012 (NUON Chea), p. 34; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 8, ERN (En) 00417606; Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 88, ERN (En) 00105137.

[627] IENG Sary Interview by ABC Television, E3/93, 28 August 1996, p. 6, ERN (En) 00078610; IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 3, ERN (En) 00342502; KAING Guek Eav Interview Record, E3/83, 20 October 2009, p. 6, ERN (En) 00398166; NUON Chea Initial Appearance Record, E3/54, 19 September 2007, p. 4, ERN (En) 00148817.

[628] *See* Section 7: Roles and Functions – Nuon Chea, para. 333.

[629] T. 11 July 2013 (Stephen HEDER), p. 15. *See e.g.* T. 20 June 2012 (YUN Kim), p. 6 (referring to the Party Centre as the "supreme leadership level of the CPK"); T. 21 August 2012 (SA Siek), p. 23 (defining the Party Centre as the level above the Zones and Sectors). *See also*, T. 18 July 2012 (David CHANDLER), p. 112 (suggesting that "Party Centre […] referred particularly to the […] Central Committee"); T. 7 August 2012 (SUONG Sikoeun), p. 12 (describing "Office 870" as the "Party Centre Office"); NORNG Sophang Interview Record, E3/64, 18 February 2009, p. 6, ERN (En) 00334047 (equating the Party Centre with "Committee 870"); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 16, ERN (En) 00346160 (mentioning a "Party Centre Standing [committee]"); SONG Meng Interview Record, E3/5142, 12 December 2007, p. 4, ERN (En) 00223616 (suggesting that POL Pot was the Party Centre); SAR Sarin DC-Cam Interview, E3/4596, 5 May 2009, p. 9, ERN (En) 00739501 (referring to the Centre as the "upper echelons").

without definition but in a context which made clear that it was referring to the top levels of the CPK hierarchy (or some constituent element thereof).[630]

206. In this Judgement, the Chamber uses the phrase 'Party Centre' to refer collectively to the senior executive organs of the CPK based in Phnom Penh – namely, the Standing Committee, Central Committee, Military Committee, Office 870, Government Office (S-71) and sub-offices of the Government Office.

5.1.5. ***Office 870***

207. The code number '870' was used ambiguously in the DK period to refer to a variety of persons and entities connected with the Party Centre. Different witnesses had different understandings of '870' but generally agreed that it referred to some aspect of the CPK leadership. According to Witness Stephen HEDER, '870' was in use as early as 1971 to designate "the centre echelon of the Party".[631] Expert David CHANDLER told the Chamber that '870' was "generally [used] to refer to Pol Pot, and sometimes to Pol Pot and a small group of people around him".[632] Witness NORNG Sophang testified that '870' "referred to the Centre".[633] Expert Philip SHORT stated that '870' was "the code name for the Standing Committee".[634] This uncertainty as to the precise meaning of '870' was consistent with the CPK's general emphasis on secrecy and, as Expert David CHANDLER observed, intentional: the use of the code number served to conceal or obscure the true nature of the CPK leadership.[635]

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[630] *See e.g. Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 15, 18 ERN (En) 00491408, 00491411; *Revolutionary Flag*, E3/135, June 1977, pp. 13, 36, ERN (En) 00446858, 00446881; *Revolutionary Flag*, E3/170, October-November 1977, pp. 6, 11, 22, ERN (En) 00182553, 00182558, 00182569; KAING Guek Eav Letter, E3/1152, 14 September 1976, p. 1, ERN (En) 00583914; Book by D. CHANDLER: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 15, ERN (En) 00192694; Article by S. HEDER: *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective*, E3/4527, undated, pp. 12-13, ERN (En) 00661466-00661467.
[631] T. 18 July 2013 (Stephen HEDER), p. 14.
[632] T. 18 July 2012 (David CHANDLER), p. 99.
[633] T. 3 September 2012 (NORNG Sophang), p. 20.
[634] T. 6 May 2013 (Philip SHORT), p. 64.
[635] T. 18 July 2012 (David CHANDLER), pp. 99-100; T. 24 July 2012 (David CHANDLER), p. 128. *See also*, T. 18 July 2013 (Stephen HEDER), p. 19.

208. A number of documents from the DK era contain references to a 'Committee 870'.[636] Although the Co-Prosecutors submit that Committee 870 was the CPK Central Committee, it is equally plausible that Committee 870 was the Standing Committee, and the Chamber is unable to make a definitive finding in this regard.[637]

209. In addition to Committee 870, there was a discrete entity known as 'Office 870', 'Political Office of 870', 'M-870' (the 'M' standing for '*munti*', the Khmer word for 'office') or 'Office of the Standing Committee' ('Office 870').[638] As of October 1975, SUA Vasi *alias* Doeun was in charge of Office 870.[639] KHIEU Samphan joined Office 870 in or around October 1975.[640] In the words of Philip SHORT, Office 870 functioned as the "executive arm" of the Standing Committee.[641] Its tasks were to implement, and to monitor implementation of, Standing Committee decisions, and to "[make] contact back and forth with each section" of the CPK's upper echelons on behalf of the Standing Committee.[642] Both Philip SHORT and David CHANDLER used the phrase "nerve centre" to describe the critically important role of Office 870 in the transmission of information to and from the Standing Committee.[643]

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[636] *See e.g.* DK Telegram, E3/932, 12 April 1978, p. 1, ERN (En) 00185199; DK Telegram, E3/245, 29 April 1978, p. 1, ERN (En) 00182759; Committee 870 Instructions, E3/1173, 27 February 1976, p. 2, ERN (En) 00525782.

[637] Co-Prosecutors' Closing Brief, para. 372. Some evidence suggested that Committee 870 was the Central Committee: *see e.g.* T. 10 January 2013 (UNG Ren), pp. 67-68; SUON Kanil Interview Record, E3/74, 21 August 2009, p. 3, ERN (En) 00384690; SENG Mon Interview Record, E3/71, 14 February 2009, p. 19, ERN (En) 00288637. A directive issued by Committee 870 purported to contain instructions from the "Party Central Committee": *see* Committee 870 Directive, E3/740, 24 July 1977. However, other evidence suggested that Committee 870 was the Standing Committee: *see* T. 6 September 2012 (NORNG Sophang), p. 95; T. 6 May 2013 (Philip SHORT), p. 64; KAING Guek Eav Written Answers, E3/359, 20 November 2009, p. 6, ERN (En) 00434339. *See also*, T. 17 July 2013 (Stephen HEDER), pp. 87-88 (observing that there was ambiguity in the use of 'Committee 870' and expressing no firm conclusion).

[638] T. 18 July 2012 (David CHANDLER), p. 121; T. 17 July 2013 (Stephen HEDER), pp. 88-89; Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754.

[639] Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; T. 29 March 2012 (KAING Guek Eav), p. 23 (clarifying that "Doeun" was SUA Vasi).

[640] Book by K. Samphan: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65, ERN (En) 00103755. *See* Section 8: Roles and Functions – Khieu Samphan, para. 390.

[641] T. 6 May 2013 (Philip SHORT), pp. 72-73.

[642] Standing Committee Minutes, E3/182, 9 October 1975, p. 4, ERN (En) 00183396; T. 8 May 2013 (Philip SHORT), pp. 26-27; Book by K. Samphan: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 66, ERN (En) 00103756.

[643] T. 20 July 2012 (David CHANDLER), p. 21; T. 9 May 2013 (Philip SHORT), p. 94.

210. One set of Standing Committee minutes mentions another, separate entity known as 'Bureau 870' (in Khmer, '*karilayai* 870', as opposed to '*munti* 870').[644] As of October 1975, it was headed by SIM Son *alias* Yem.[645] Its precise function remains unknown, but its Khmer title suggests that its role was more administrative than political.[646]

5.1.6. *Government Office (S-71) and sub-offices*

211. As well as Office 870, the Party Centre maintained an administrative office, which was referred to in CPK Standing Committee meeting minutes as the 'Government Office'.[647] As of October 1975, the Government Office was run by CHIMM Sam Aok *alias* Pang.[648] Several witnesses referred to the unit headed by Pang as 'S-71', and a section or ministry designated 'S-71' appears repeatedly in the lists of prisoners brought to the S-21 Security Office, suggesting that 'S-71' was the code name for the Government Office.[649]

212. S-71 may have been a division of Office 870, or it may have been a separate entity. Although Standing Committee meeting minutes suggest that they were

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[644] Standing Committee Minutes, E3/182, 9 October 1975, p. 2, ERN (En) 00183394. *See* T. 17 July 2013 (Stephen HEDER), pp. 92-93.

[645] Standing Committee Minutes, E3/182, 9 October 1975, p. 2, ERN (En) 00183394; T. 29 March 2012 (KAING Guek Eav), p. 23 (clarifying that "Yem" was SIM Son).

[646] While both '*munti'* and '*karilayai*' can be rendered in English as 'office' or 'bureau', '*munti*' connotes a larger administrative structure whereas '*karilayai*' typically refers to a smaller unit or sub-division. A '*munti*' may contain more than one '*karilayai*'. *See also*, T. 17 July 2013 (Stephen HEDER), pp. 92-93.

[647] Standing Committee Minutes, E3/182, 9 October 1975, p. 2, ERN (En) 00183394; T. 18 July 2013 (Stephen HEDER), p. 12.

[648] Standing Committee Minutes, E3/182, 9 October 1975, p. 2, ERN (En) 00183394; T. 4 September 2012 (NORNG Sophang), pp. 17-18; T. 28 March 2012 (KAING Guek Eav), p. 68; T. 29 March 2012 (KAING Guek Eav), pp. 23-24 (clarifying that 'Pang' was CHIMM Sam Aok).

[649] T. 4 September 2012 (NORNG Sophang), pp. 17-18; T. 18 July 2013 (Stephen HEDER), p. 12; T. 26 March 2012 (KAING Guek Eav), p. 109; NOEM Sem Interview Record, E3/43, 18 July 2009, p. 4, ERN (En) 00365659; KONG Yeuang SOAS Interview, E3/5315, 27 July 2005. *See also*, List of Prisoners from Ministry S-71, E3/1737, undated; List of Prisoners from Ministry S-71, E3/1738, 20 June 1978; List of Persons Entering on 24 May 1978, E3/1955, 24 May 1978 (all identifying S-21 detainees from "Ministry S-71", most of whom are stated to have worked for one of the 'K' offices: *see* Section 5: Administrative Structures, para. 213. At an earlier time, 'S-71' was also the code name for the base near the Chinit River to which the CPK leadership moved in 1970: T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 92; THA Sot Interview Record, E3/464, 19 January 2008, p. 7, ERN (En) 00226112. *See also*, T. 23 April 2012 (SALOTH Ban), p. 23 (describing the move to the Chinit River base).

distinct,[650] Witness Stephen HEDER recalled that many of the people he had interviewed conflated the two offices, and indeed several witnesses who testified before the Trial Chamber referred to the unit run by CHIMM Sam Aok *alias* Pang using the code number '870'.[651] According to a number of other witnesses, however, S-71 under Pang performed a different function from Office 870 under SUA Vasi *alias* Doeun. Whereas Doeun's Office 870 was concerned with matters of policy implementation, Pang's S-71 office dealt primarily with logistical, practical and administrative tasks.[652]

213. In particular, S-71 oversaw a variety of sub-offices and units, which themselves performed support functions for the Party Centre and which were mostly identified by code names beginning with the prefix 'K'.[653] K-1 was the compound in Phnom Penh within which POL Pot lived and worked.[654] K-3 was another residential and office compound in Phnom Penh for the CPK senior leaders, including NUON Chea and KHIEU Samphan.[655] K-6 was a CPK political school at Borei Keila in Phnom

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[650] Standing Committee Minutes, E3/182, 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394 (listing separately the "Political Office of 870" and the "Government Office").

[651] T. 3 May 2012 (PEAN Khean), p. 22; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 92; T. 20 September 2012 (CHEA Say), pp. 74-75; T. 13 June 2012 (OEUN Tan), p. 17; T. 25 September 2012 (NOEM Sem), p. 42; T. 23 April 2012 (SALOTH Ban), p. 89.

[652] T. 18 July 2013 (Stephen HEDER), pp. 12-13, 15-17 (describing S-71 as an administrative office, separate from Office 870); T. 3 May 2012 (PEAN Khean), p. 22 (indicating that Pang "would manage day to day tasks in the office, including K-1, K-3, and K-7"); T. 13 June 2012 (OEUN Tan), p. 39 (stating that Pang was in charge of the messengers and production section, and assigned tasks to the staff at K-1); ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 7, ERN (En) 00223584 ("Pang was in charge of 870 administration, and Doeun was in charge of policy"); KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 5, ERN (En) 00154910 (describing a "Committee of the Working Group in charge of Office 870" led by Pang, with responsibility for security, welcoming guests, telecommunications, logistics, food and transport); NORNG Sophang Diagram, E3/1736, 28 March 2009 (showing that Pang's S-71 managed the 'K' offices); Case 001 Trial Transcript (Craig ETCHESON), E3/55, 21 May 2009, p. 28, ERN (En) 00330361 (testifying that S-71 was the "secretariat" of Office 870, comprising a network of support offices serving the Party Centre). *See also*, Section 5: Administrative Structures, para. 209. *See also*, Section 5: Administrative Structures, fn. 624 above (showing that Doeun attended many of the Standing Committee meetings for which minutes survive, whereas Pang attended none).

[653] T. 3 May 2012 (PEAN Khean), p. 22; T. 4 September 2012 (NORNG Sophang), pp. 17-18; T. 18 July 2013 (Stephen HEDER), pp. 12, 15, 21; THA Sot Interview Record, E3/464, 19 January 2008, p. 5, ERN (En) 00226110; NORNG Sophang Diagram, E3/1736, 28 March 2009.

[654] T. 3 May 2012 (PEAN Khean), p. 18; T. 13 June 2012 (OEUN Tan), p. 38; T. 25 September 2012 (NOEM Sem), pp. 63-64; T. 8 January 2013 (SA Vi), p. 12; T. 10 June 2013 (SO Socheat), p. 67; T. 7 June 2013 (SOK Roeu), p. 74.

[655] T. 2 May 2012 (PEAN Khean), p. 48; T. 18 April 2012 (SAUT Toeung), p. 47; T. 25 September 2012 (NOEM Sem), pp. 63-64; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 88; T. 8 January 2013 (SA Vi), p. 22; T. 6 May 2013 (Philip SHORT), p. 77; T. 10 June 2013 (SO Socheat), pp. 70-71. T. 7 June 2013 (SOK Roeu), p. 78; T. 17 June 2013 (LENG Chhoeung), pp. 9-14.

Penh.[656] K-7 was the messenger unit.[657] K-8 was responsible for growing vegetables.[658] K-9 was a textile factory.[659] K-11 was a medical facility.[660] K-12 organised motor vehicles and drivers.[661] K-15 was a political training school, principally (but not exclusively) for Cambodians returning from overseas.[662] K-18 was a telegraph office.[663]

214. S-71 was also empowered to make arrests and to transfer detainees to the S-21 Security Office.[664] In 1978, CHIMM Sam Aok *alias* Pang was himself arrested and taken to S-21, and his deputy KHAN Lin *alias* Ken took charge of S-71.[665]

5.1.7. ***Zones, Sectors, Districts and sub-district entities***

215. Below the level of the Party Centre, Democratic Kampuchea was divided into a hierarchical series of administrative areas. At the top of this hierarchy were the Zones. The Zones were originally devised by the CPK in the pre-1975 period of armed

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656 THA Sot Interview Record, E3/464, 19 January 2008, p. 6, ERN (En) 00226111; SA Sarin DC-Cam Interview, E3/4596, 5 May 2009, pp. 34, 63-64, ERN (En) 00735926, 00739555-00739556; UM Keo Interview Record, E3/5173, 8 May 2008, p. 3, ERN (En) 00272660; SENG Lytheng Interview Record, E3/462, 4 December 2007, p. 4, ERN (En) 00223565.

657 T. 3 September 2012 (NORNG Sophang), pp. 15-16; T. 21 March 2012 (KAING Guek Eav), p. 28.

658 T. 25 September 2012 (NOEM Sem), p. 34; T. 7 June 2013 (SOK Roeu), p. 73; NORNG Sophang Interview by CHAY Chandaravann and Thomas KEUHNEL, E3/1739, 18 February 2009, p. 2, ERN (En) 00844057.

659 T. 3 July 2013 (EK Hen), p. 26.

660 T. 25 September 2012 (NOEM Sem), pp. 37, 38; CHEA Say Interview Record, E3/69, 11 December 2007, p. 3, ERN (En) 00233151.

661 THA Sot Interview Record, E3/464, 19 January 2008, pp. 3, 6, ERN (En) 00226108, 00226111; CHEA Say Interview Record, E3/69, 11 December 2007, p. 3, ERN (En) 00233151; YIM Laing Interview Record, E3/463, 18 January 2008, p. 5, ERN (En) 00204734.

662 T. 7 August 2012 (ONG Thong Hoeung), pp. 98, 99-100; SA Sarin DC-Cam Interview, E3/4596, pp. 32-33, ERN (En) 00739524-00739525.

663 T. 29 August 2012 (NORNG Sophang), p. 70; PHAN Van Interview Record, E3/447, 28 February 2010, p. 11, ERN (En) 00486520.

664 T. 24 April 2012 (SALOTH Ban), pp. 19-20, 25, 45; T. 25 April 2012 (SALOTH Ban), p. 67; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 5, ERN (En) 00198883; KAING Guek Eav Interview Record, E3/107, 24 June 2008, p. 4, ERN (En) 00198220.

665 S-21 Confession - CHHIM Sam Aok, E3/1596, 28 May 1978; T. 28 March 2012 (KAING Guek Eav), p. 93; T. 10 April 2012 (KAING Guek Eav), p. 11; T. 13 June 2012 (OEUN Tan), p. 102; T. 25 September 2012 (NOEM Sem), pp. 5, 45, 47; T. 8 January 2013 (SA Vi), p. 49; T. 25 April 2013 (RUOS Suy), pp. 55-56; T. 18 July 2013 (Stephen HEDER), pp. 12-13; THA Sot Interview Record, E3/464, 19 January 2008, pp. 4, 5, ERN (En) 00226109, 00226110; OEUN Tan Interview Record, E3/33, 9 October 2008, p. 7, ERN (En) 00235131; LENG Chhoeung Interview Record, E3/385, 17 July 2009, p. 7, ERN (En) 00360131.

struggle.[666] Initially, there were six zones: the North Zone (given the code number 304[667]), the Northwest Zone (code number 560[668]), the Northeast Zone (code number 108, later changed to 109[669]), the Southwest Zone (405[670]), the East Zone (203[671]) and the Special Zone (which comprised the area around Phnom Penh).[672]

216. After the capture of Phnom Penh in 1975, the Zone boundaries were redrawn: a new West Zone (code number 401) was added, and the Special Zone around Phnom Penh was dissolved and absorbed into neighbouring Zones.[673] The Zones did not follow existing provincial boundaries precisely; for example, the East Zone encompassed Prey Veng and Svay Rieng as well as parts of Kratie, Kandal and Kampong Cham Provinces.[674] By 1975 there were also a number of autonomous or 'specially-assigned' Sectors– namely Preah Vihear (code number 103), Mondulkiri (105), Siem Reap/Oddar Meanchey (106), Kratie (505) and the city of Kampong Som – which did not fall within any Zone and which answered directly to the Party

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[666] DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, pp. 11-12, ERN (En) 00814510-00814511.

[667] T. 21 August 2012 (KIM Vun), p. 96; T. 3 July 2013 (EK Hen), p. 19.

[668] Map of Democratic Kampuchea, E3/475, undated, ERN P 00000002; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143. *See also*, DK Report, 29 May 1977, E3/179 (Zone report from 'Office 560').

[669] SA Sarin DC-Cam Interview, E3/4596, 5-6 May 2009, p. 58, ERN (En) 00739550; KHIEU Samphan Interview Transcript, E3/4005, undated, ERN (En) 00788908; Map of Democratic Kampuchea, E3/475, undated, ERN P 00000002; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143.

[670] Map of Democratic Kampuchea, E3/475, undated, ERN P 00000002; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143.

[671] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 33-34; T. 3 July 2013 (EK Hen), p. 22.

[672] T. 29 August 2012 (NORNG Sophang), pp. 76-77; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 52, ERN (En) 00170743; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 3, ERN (En) 00417601; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 86-87, ERN (En) 00678538; Book by E. BECKER: *When The War Was Over*, E3/20, 1986, p. 173, ERN (En) 00237878.

[673] T. 8 October 2012 (MEAS Voeun), p. 37; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; Map of Democratic Kampuchea, E3/475, undated, ERN P 00000002; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143; Book by E. BECKER: *When The War Was Over*, E3/20, 1986, p. 175, ERN (En) 00237880; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 94, ERN (En) 00678542. *See also*, MEAS Voeun Interview Record, E3/73, 4 March 2010, p. 3, ERN (En) 00491661 (stating that 'M-401' was the office of Ta Si, Secretary of the West Zone: *see* Section 5: Administrative Structures, para. 220).

[674] DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143.

Centre.[675] Further restructuring took place in or around 1977: a new North Zone (code number 801) was created out of what had previously been the Preah Vihear and Siem Reap/Oddar Meanchey Autonomous Sectors, and the old North Zone was renamed 'Central Zone'.[676]

217. Each Zone was sub-divided into a number of Sectors (also known as 'Regions'), which were generally known by their code numbers.[677] Sectors were further divided into Districts, which were in turn made up of sub-district entities, including Communes.[678] Within the communes, individual villages were gradually combined into co-operatives, in which people lived, worked, studied and ate communally.[679] In some areas, co-operatives were treated as sub-units of the communes, and were subject to the authority of the commune leadership.[680] In other

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[675] T. 19 June 2012 (YUN Kim), pp. 28-29; T. 29 August 2012 (NORNG Sophang), p. 59; T. 5 September 2012 (NORNG Sophang), p. 12; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; Map of Democratic Kampuchea, E3/475, undated, ERN P 00000002; Map of Democratic Kampuchea, E3/476, undated, ERN (En) 00295143. *See* Section 7: Roles and Functions – Nuon Chea, para. 312; Section 8: Roles and Functions – Khieu Samphan, para. 385.

[676] T. 4 September 2012 (NORNG Sophang), p. 7; T. 14 December 2012 (SUON Kanil), pp. 56-57; T. 28 March 2012 (KAING Guek Eav), p. 13; T. 21 May 2013 (PRUM Sou), p. 34; PRUM Sou Interview Record, E3/420, 24 November 2009, pp. 4, 6, ERN (En) 00422380, 00422382; SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613; Book by E. BECKER: *When The War Was Over*, E3/20, 1986, p. 175, ERN (En) 00237880.

[677] CPK Statute, E3/130, undated, p. 17, Article 7, ERN (En) 00184038; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; T. 28 March 2012 (KAING Guek Eav), pp. 15-16; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 89, ERN (En) 00678539.

[678] CPK Statute, E3/130, undated, p. 17, Article 7, ERN (En) 00184038; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, pp. 12-13, ERN (En) 00814511-00814512; T. 28 March 2012 (KAING Guek Eav), p. 15;.S. HEDER and M. MATSUSHITA article: Interviews with Kampuchean Refugees at Thai-Cambodia Border, E3/1714, February-March 1980, p. 3, ERN (En) 00170694.

[679] T. 6 December 2011 (KLAN Fit), p. 89; T. 13 June 2012 (OEUN Tan), p. 24; T. 6 May 2013 (Philip SHORT), p. 93; T. 21 May 2013 (PROM Sou), p. 8; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12-13, ERN (En) 00814511-00814512.

[680] T. 29 May 2012 (NY Kan), pp. 74-75; T. 11 April 2013 (François PONCHAUD), pp. 20-21; KHIM Pang Interview Record, E3/5510, 27 October 2009, p. 3, ERN (En) 00411490; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, p. 4, ERN (En) 00410247. *See also*, T. 3 May 2013 (LIM Sat), pp. 50-51; SAU Khon Interview Record, E3/5506, 25 October 2009, p. 3, ERN (En) 00398862; NUT Nouv Interview Record, E3/5521, 1 December 2009, pp. 10-11, ERN (En) 00422324-00422325 (confirming that the co-operative leadership was distinct from the commune leadership) .

areas, however, large co-operatives eventually replaced communes as the lowest administrative sub-regions in the CPK hierarchy.[681]

218. All levels of the hierarchy – Zones, Sectors, Districts, Communes and co-operatives – were governed by committees.[682] Committees typically comprised a secretary (or chairman), a deputy secretary (or deputy chairman) and at least one other member.[683] Within each committee, particular areas of policy responsibility were often delegated to an individual committee member or sub-committee.[684] The committee secretary in each echelon was usually appointed by the committee of the level immediately above.[685] For example, commune secretaries were appointed by District committees,[686] and District secretaries by Sector committees.[687] In principle, committees were required by the CPK Statute to convene conferences at regular intervals in order to select new members, but in practice committee members were (like secretaries) generally appointed by the committee of the level immediately above.[688]

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[681] T. 20 June 2012 (YUN Kim), pp. 6-7; T. 28 March 2012 (KAING Guek Eav), p. 16; YUN Kim Interview Record, E3/368, 12 June 2009, p. 4, ERN (En) 00345192. *See also*, T. 6 June 2012 (SAO Sarun), p. 60 (stating that co-operatives received instructions directly from the District level); T. 24 January 2013, p. 29 (citing TOEM Rithy Civil Party application, E3/4828) (indicating that communes and co-operatives were "equivalent"); Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 85, ERN (En) 00105134.

[682] CPK Statute, E3/130, undated, p. 17, Article 7, ERN (En) 00184038; T. 26 March 2012 (KAING Guek Eav), p. 92; T. 28 March 2012 (KAING Guek Eav), pp. 15-17; T. 29 May 2012 (NY Kan), pp. 74-75; T. 6 June 2012 (SAO Sarun), pp. 45, 60; T. 1 July 2013 (PECH Chim), p. 38; SUON Kanil Interview Record, E3/411, 19 August 2009, p. 4, ERN (En) 00390076.

[683] T. 6 December 2011 (KLAN Fit), pp. 61-62; T. 7 December 2012 (HUN Chhunly), p. 99; T. 14 December 2012 (SUON Kanil), pp. 58, 66; T. 22 May 2013 (PROM Sou), pp. 19-20; T. 18 July 2013 (Stephen HEDER), p. 20; MEAS Voeun Interview Record, E3/80, 3 March 2010, p. 4, ERN (En) 00491656; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 86-92, ERN (En) 00678538-00678541.

[684] UK Bunchhoeun DC-Cam Interview, E3/387, undated, p. 4, ERN (En) 00350203; BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 11, ERN (En) 00274104; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 15, ERN (En) 00142840.

[685] Case 001 Trial Transcript (Craig ETCHESON), E3/345, 18 May 2009, p. 74, ERN (En) 00328518.

[686] T. 6 December 2011 (KLAN Fit), p. 56 (stating that he was appointed as commune chairman by the district chief and the zone committee); T. 7 December 2011 (ROMAM Yun), p. 36; T. 20 June 2012 (YUN Kim), p. 3; T. 25 January 2012 (PRAK Yut), p. 92; T. 5 June 2012 (SAO Sarun), p. 86; T. 20 May 2013 (IENG Phan), pp. 90-91; Book by B. KIERNAN: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, p. 377, ERN (En) 00487497.

[687] T. 5 June 2012 (SAO Sarun), pp. 78, 85.

[688] CPK Statute, E3/130, undated, pp. 19-22, Articles 11, 12, 15, 18, ERN (En) 00184040-00184043; MEI Suon Interview Record, E3/1675, 21 October 2009, p. 3, ERN (En) 00403031; TEP Poch Interview Record, E3/5293, 4 July 2009, pp. 3-4, ERN (En) 00351701-00351702; SOU Soeun

219. The committee secretary in each tier was also generally a member (or at least attended the meetings) of the committee of the echelon immediately above: thus, commune secretaries would attend meetings of the District committee,[689] District secretaries would attend meetings of the Sector committee[690] and Sector secretaries would attend meetings of the Zone committee.[691] Zone secretaries, such as MUOL Sambath *alias* ROS Nhim (secretary of the Northwest Zone), were usually members of the Central Committee.[692] Some, such as SAO Phim (secretary of the East Zone) and Ta Mok (secretary of the Southwest Zone), were also members of the Standing Committee.[693]

220. Other Zone secretaries in the DK period included CHOU Chet *alias* Si, who served as secretary of the West Zone until he was arrested in 1978;[694] KE Vin *alias* KE Pauk, who replaced KOY Thuon as secretary of the original North Zone (later to become the Central Zone) in 1975;[695] CHANN Sam *alias* KANG Chap *alias* Se, who

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Interview Record, E3/5294, 5 July 2009, p. 4, ERN (En) 00360112; BUN Thien Interview Record, E3/5498, 17 August 2009, p. 4, ERN (En) 00384398; T. 4 October 2012 (MEAS Voeun), p. 20.

[689] T. 6 June 2012 (SAO Sarun), p. 12; SARAY Hean Interview Record, E3/5608, 10 March 2010, p. 3, ERN (En) 00491734.

[690] T. 28 May 2012 (NY Kan), p. 43; T. 11 December 2012 (PHAN Van), p. 83.

[691] CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 3, ERN (En) 00513313; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303.

[692] T. 30 January 2012 (NUON Chea), pp. 36-37; T. 28 March 2012 (KAING Guek Eav), pp. 14-15; Report by S. HEDER and M. MATSUSHITA: Interviews with Kampuchean Refugees at Thai-Cambodia Border, E3/1714, February-March 1980, p. 59, ERN (En) 00170750. *See also*, T. 3 September 2012 (NORNG Sophang), p. 93 (confirming that ROS Nhim was Secretary of the Northwest Zone); T. 6 December 2012 (HUN Chhunly), p. 89 (giving ROS Nhim's real name). ROS Nhim was also the second deputy chairman of the State Presidium until he was arrested and sent to S-21 in June 1978: *see* DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068; S-21 Confession – ROS Nhim, E3/3989, 14 June 1978.

[693] T. 30 January 2012 (NUON Chea), pp. 36-37; T. 20 June 2012 (KHIEV Neou), p. 102; T. 19 July 2012 (David CHANDLER), pp. 56-57; T. 8 January 2013 (SA Vi), pp. 73-74; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750. *See* Section 5: Administrative Structures, fn. 620 and fn. 621. SAO Phim was also the first deputy chairman of the State Presidium until he died, probably by committing suicide, in mid-1978: *see* DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068; Case 001 Trial Transcript (KAING Guek Eav), E3/5797, 8 June 2009, p. 77, ERN (En) 00338594; Book by N. CHANDA: *Brother Enemy: The War After The War*, E3/2376, p. 442, ERN (En) 00192627.

[694] T. 22 April 2013 (CHHOUK Rin), p. 74; T. 8 May 2013 (Philip SHORT), p. 137; T. 4 October 2012 (MEAS Voeun), p. 11 (confirming that CHOU Chet went by the *alias* 'Si' or 'Ta Si'); T. 28 March 2012 (KAING Guek Eav), p. 14; KHUN Kim Interview Record, E3/422, 30 November 2009, p. 4, ERN (En) 00414065; KOL Sokun Interview Record, E3/5202, 27 August 2008, p. 3, ERN (En) 00275151; Book by D. CHANDLER: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 73, ERN (En) 00192752; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 89, ERN (En) 00678539.

[695] SUON Kanil Interview Record, E3/344, 18 August 2009, p. 5, ERN (En) 00384426; T. 26 March 2012 (KAING Guek Eav), p. 57; T. 19 March 2012 (KAING Guek Eav), p. 39 (clarifying that KE Vin

served as secretary of the new North Zone until his arrest in 1978;[696] and MEN San *alias* NEY Sarann *alias* Ya, who served as secretary of the Northeast Zone until he was replaced, probably by his deputy UM Neng *alias* Vi.[697]

5.1.8. ***Angkar***

221. The word '*Angkar*' was widely used from the early days of the Cambodian communist movement to refer to the party that became the CPK.[698] Like the phrase 'Party Centre', however, it was a vague and obfuscatory term.[699] For example, Civil Party ROMAM Yun described a committee appointed by the local commune as a manifestation of '*Angkar*';[700] but to others, '*Angkar*' was a code word for the higher echelons of the CPK.[701] Witness KAING Guek Eav stated that when he used the word '*Angkar*', he was referring to "the Party Central Committee or any particular person representing Pol Pot or the Party Central Committee", although he added that others

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was also known as KE Pauk); SARAY Hean Interview Record, E3/5608, 10 March 2010, p. 4, ERN (En) 00491735; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 11, ERN (En) 00142836; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 91, ERN (En) 00678540.

[696] T. 21 May 2013 (PROM Sou), p. 32; S-21 Confession – CHANN Sam *alias* Se, E3/2792, 25 October 1978; Report by S. HEDER and M. MATSUSHITA: Interviews with Kampuchean Refugees at Thai-Cambodia Border, E3/1714, February-March 1980, p. 55, ERN (En) 00170746; KHIEU Samphan SOAS/HRW Interview, E3/198, 17 August 2005, p. 1, ERN (En) 00184680; Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, p. 139, ERN (En) 00397054; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 344, ERN (En) 00678674.

[697] T. 23 July 2012 (David CHANDLER), p. 28 (testifying that NEY Sarann *alias* Ya was the secretary of the Northeast Zone); T. 13 December 2012 (PHAN Van), p. 3 (stating that 'Ya' was the leader of the Northeast Zone); T. 6 May 2013 (Philip SHORT), pp. 81-82 (clarifying that 'Ya' was the *alias* of NEY Sarann); CHIN Kim Thong Interview Record, E3/406, 5 November 2009, p. 2, ERN (En) 00404076 (stating that 'Ya' led the Northeast Zone until he was arrested); KAING Guek Eav Interview Record before the Military Court of the Kingdom of Cambodia, E3/530, 4 July 2002, p. 1, ERN (En) 00329133 (indicating that MEN San *alias* Ya was secretary of the Northeast Zone until his arrest); Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 11, ERN (En) 00142836 (indicating that MEN San was executed in 1977 and replaced by UM Neng); Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 90-91, ERN (En) 00678540 (stating that UM Neng replaced NEY Sarann as Northeast Zone secretary in 1975).

[698] T. 6 May 2013 (Philip SHORT), p. 64.

[699] T. 24 July 2012 (David CHANDLER), p. 39. *See also*, T. 1 July 2013 (PECH Chim), pp. 83-85 (describing different understandings of the word 'Angkar').

[700] T. 7 December 2011 (ROMAM Yun), p. 13. *See also*, TITH Sokhom Interview Record, E3/382, 18 May 2009, p. 3, ERN (En) 00345895 (referring to a District secretary as 'Angkar').

[701] SAO Hean Interview Record, E3/5518, 21 November 2009, p. 4, ERN (En) 00413898 ("I just heard that Angkar was the upper-echelon that put in place the plans for us to carry out"); SAO Phen Interview Record, E3/445, 5 April 2010, p. 3, ERN (En) 00508572 (describing Angkar as the "upper echelons of the Khmer Rouge", from the District level upwards).

used the term differently.[702] A reference to '*Angkar*' in a document was sometimes a reference to a specific senior member of the CPK, such as SON Sen or POL Pot.[703] Witness SAUT Toeung testified that, in his understanding, '*Angkar*' meant POL Pot and NUON Chea.[704] The frequency with which individuals and "bad elements" held themselves out to be '*Angkar*' prompted Committee 870 to issue a directive in 1977 in the following terms:

> 1. The term "*Angkar*" or "Party" is used only for the organization. It shall not be used for any individual.
>
> 2. For individual (*sic*): "comrade", "this person's name", or "comrade in this or that position", or "comrade representing *Angkar* at this or that level" shall be used.[705]

222. However, it is not clear to what extent the directive was circulated amongst ordinary people. Although Witness PECH Chim, a former District secretary, recalled teaching people "not to refer to any particular individual as *Angkar*", it was uncertain whether this was a result of the directive or not; and it is obvious that many of those interviewed by the OCIJ never fully grasped the meaning of '*Angkar*', either before or after 1977.[706]

5.1.9. ***Democratic Centralism***

223. Broadly speaking, the CPK was organised in accordance with the principle of 'democratic centralism'. As set out in the CPK Statute, this concept had two dimensions. First, decisions would be made democratically, that is collectively rather than individually.[707] Structurally, this was reflected in the ubiquity of committees

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[702] T. 29 March 2012 (KAING Guek Eav), pp. 14-15.
[703] T. 27 March 2012 (KAING Guek Eav), p. 35; T. 28 March 2012 (KAING Guek Eav), p. 73.
[704] T. 19 April 2012 (SAUT Toeung), p. 73.
[705] Committee 870 Directive, E3/740, 24 July 1977.
[706] T. 1 July 2013 (PECH Chim), p. 85. *See e.g.* PEN Loeut Interview Record, E3/5226, 18 November 2008, p. 3, ERN (En) 00250278 ("I didn't know who Angkar was"); MIECH Ponn Interview Record, E3/5523, 9 December 2009, p. 3, ERN (En) 00434651 ("At that time, I did not know who the Angkar or Central Committee was"); DUCH Phleu Interview Record, E3/5213, 28 August 2008, p. 3, ERN (En) 00275433 ("I did not know who Angkar was"); Interview with CHUM Manh by Co-Prosecutors, E3/5690, 17 August 2006, p. 2, ERN (En) 00146775 ("At first time I don't know what Angkar is"); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 8, ERN (En) 00353705 ("I did not know at that time who Angkar was"); PECH Sokha Interview Record, E3/403, 12 October 2009, p. 4, ERN (En) 00403004 (discussing the period after 1977, and stating: "I did not know who *Angkar* was. I just heard *Angkar*."); KEANG Vannary Interview Record, E3/5310, 7 July 2009, p. 10, ERN (En) 00353490 ("Q. What do you mean by Angkar? A. I do not know; I heard others say Angkar, so I said Angkar.").
[707] CPK Statute, E3/130, undated, p. 16, Article 6, ERN (En) 00184037.

within the CPK hierarchy. Second, decisions would be made centrally, by the upper echelons of the Party, to whom the lower echelons would report and from whom they would receive instructions.[708] This was reflected in the pyramidal leadership structure of the Party, with power concentrated in a small Standing Committee to which all other tiers were functionally subordinate.

224. The NUON Chea Defence argues that it was ultimately POL Pot, not the entire Standing Committee, who was responsible for the decisions ostensibly emanating from the Standing Committee.[709] This is at odds, however, with NUON Chea's own evidence, in which he stated clearly that the principle of collective decision-making was implemented "at every stage, at all […] times" in the CPK, and specifically at the meetings of the Central and Standing Committees which he attended.[710] As NUON Chea explained to the Chamber:

> "[C]ollectivity" means everybody would participate in a meeting to express the ideas. Every meeting adhered to this principle, and not only at the Central Committee – Central or Standing Committees' level. And then the Secretary of the Party would consolidate all those ideas and opinions, and if members of the Party are not satisfied, then all together would be able to express their objections or opposal *(sic)* until they reach a unanimous agreement, then it would become official. Otherwise, if there is no complete agreement, discussion needs to continue.

Similarly, when asked in a 2006 interview whether POL Pot had a monopoly on power during the DK era, NUON Chea rejected this proposition and stated that decisions were made collectively.[711]

225. KHIEU Samphan also indicated that key decisions were made collectively. In respect of the Standing Committee's decision to evacuate Phnom Penh, he said that "if there had been a single voice against the evacuations, there could have been no evacuations".[712] However, IENG Sary claimed that his own individual dissent was not

[708] CPK Statute, E3/130, undated, p. 16, Article 6, ERN (En) 00184037.
[709] NUON Chea Defence Closing Statement, para. 189.
[710] T. 15 December 2011 (NUON Chea), pp. 33-36.
[711] NUON Chea Interview by Japanese journalist, E3/26, undated, p. 8, ERN (En) 00329511.
[712] KHIEU Samphan Interview Transcript, E3/4051, undated, p. 1, ERN (En) 00788872.

enough to stop the Standing Committee from proceeding with the abolition of currency in 1975.[713]

226. Expert David CHANDLER testified that, although POL Pot would have had the "last word" in decision-making as CPK Secretary, there was no evidence that he had made decisions alone during the DK period:

> There's no evidence that the Standing Committee was not in most cases cohesive. I say "most cases" because some of them were taken away and executed, but certainly there's no evidence that they – was any public disagreement that he overrode with a singular decision. The atmosphere was collegial, this was a place where I think he was given this authority, but I don't have the evidence that he ever used a one-man authority to override the collective view of all his committee.[714]

227. Expert Philip SHORT cast the meetings of the Standing Committee in a slightly different light: in his opinion, POL Pot solicited the opinions of other members at Standing Committee meetings and incorporated their remarks in his conclusions, but "the policy that emerged was that which he had essentially decided himself before the meeting even began".[715]

228. In light of the evidence given by NUON Chea, KHIEU Samphan and IENG Sary – all of whom attended or participated in meetings of the Standing Committee – the Chamber is satisfied that key decisions of the Standing Committee were not simply made unilaterally by POL Pot, but rather were made collectively; that is to say, with the input of, and with a broad consensus from, the entire Committee. However, the Chamber is unable to conclude that unanimity was required in decision-making, and therefore leaves open the possibility that individual members may have disagreed with particular decisions from time to time.

5.2. Structure of Democratic Kampuchea

229. In April 1975, as Phnom Penh fell to the military forces of the CPK and the LON Nol regime collapsed, foreign governments began to extend formal diplomatic

[713] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 4, ERN (En) 00417602.
[714] T. 24 July 2012 (David CHANDLER), pp. 23-24.
[715] T. 6 May 2013 (Philip SHORT), p. 75.

recognition to the GRUNK.[716] An invitation by the United States government to NORODOM Sihanouk to return immediately to Cambodia and take power went unheeded, and U.S. embassy personnel were evacuated from Phnom Penh on 12 April 1975 together with acting Prime Minister SAUKHAM Khoy.[717] By 17 April 1975, most of the remaining senior leaders of the Khmer Republic had fled the country and the CPK/FUNK takeover was complete.[718]

230. In reality, the GRUNK administration that took power in Cambodia was a façade, and it was the CPK that exercised actual control.[719] NORODOM Sihanouk had foreseen this outcome two years earlier, telling an audience in China:

> After the war is over, Prince Sihanouk will only be a symbol of national unity…In reality power will be in the hands of the Khmer Rouge.[720]

231. One commentator in 1975 observed that the GRUNK cabinet was dominated by the Khmer Rouge, with "only two 'Sihanoukists'" amongst its members.[721] NORODOM Sihanouk himself, though ostensibly the head of state, did not arrive in Phnom Penh until September 1975, having spent the previous months in Beijing and Pyongyang.[722]

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[716] Book by F. PONCHAUD: *Cambodia Year Zero*, E243.1, p. 12, ERN (En) 00862033; *Untitled article: Sweden officially recognised…* (Washington Post), E3/3296, 16 April 1975.

[717] *Sihanouk Silent as Insurgents Wait Outside Phnom Penh* (The Guardian), E3/4422, 14 April 1975, ERN (En) S 00002624; Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 27, ERN (En) 00524011; *White Flags Over Phnom Penh* (Newsweek), E3/3721, 28 April 1975, ERN (En) S 00002598; *The Unknown Dimensions of the Cambodian Tragedy* (Washington Post), E3/4479, 19 February 1978; Book by N. CHANDA: *Brother Enemy: The War After The War*, E3/2376, p. 40, ERN (En) 00192225.

[718] *White Flags Over Phnom Penh* (Newsweek), E3/3721, 28 April 1975, ERN (En) S 00002600; Book by N. CHANDA: *Brother Enemy: The War After The War*, E3/2376, p. 38, ERN (En) 00192223.

[719] T. 19 July 2012 (David CHANDLER), pp. 104-105; T. 9 May 2013 (Philip SHORT), pp. 69-70; Book by G. CHON and THET Sambath: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, p. 13, ERN (En) 00757482. *See also*, Standing Committee Minutes, E3/182, 9 October 1975 (assigning specific areas of policy responsibility to senior CPK members). *See also*, Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 9, ERN (En) 00523993 (reporting earlier statements by NORODOM Sihanouk to the effect that "the Khmer Rouge hold the majority within the GRUNK…It is now a communist-oriented government…I am giving up everything to the Khmer Rouge").

[720] Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 16, ERN (En) 00524000.

[721] Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 25, ERN (En) 00524009.

[722] *Reception for Sihanouk: Speeches by Khieu Samphan and Sihanouk* (in SWB Collection), E3/711, 11 September 1975, ERN (En) S 00003732-S 00003732; *Sihanouk Pledges 'Democratic' Rule* (New

232. In October 1975, the CPK Standing Committee assigned specific areas of policy responsibility to 13 senior members, including NUON Chea (given responsibility for "Party Affairs, Social Action, Culture, Propaganda and Education") and KHIEU Samphan (given responsibility for "the Front and the Royal Government, and Commerce for accounting and pricing").[723] IENG Sary was assigned "Foreign Affairs work, both Party and State", while POL Pot retained "general responsibility over the military and the economy".[724] KOY Thuon *alias* Thuch was assigned "Domestic and International Commerce", SON Sen was to deal with the "General Staff and Security", VORN Vet was given responsibility for "Industry, Railroads and Fisheries", IENG Thirith *alias* Phea was to take charge of "Culture, Social Action and Foreign Affairs", YUN Yat *alias* At was assigned "Propaganda and Re-education, both internal and external" and NON Suon *alias* Chey was to deal with "Agriculture".[725]

233. On 14 December 1975, KHIEU Samphan presented a new draft constitution at a national congress in Phnom Penh.[726] On 5 January 1976, the constitution ("DK Constitution") came into effect, and the state of Democratic Kampuchea was born.[727] The DK Constitution vested legislative power in a People's Representative Assembly ("PRA"), which was to comprise 250 elected members.[728] The government was to be elected by, and answerable to, the members of the PRA.[729] "People's courts" were also to be appointed by the PRA.[730] In place of the monarchy, the DK Constitution

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York Times), E3/3296, 16 April 1975; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 8, ERN (En) 00170699; Book by N. CHANDA: *Brother Enemy: The War After The War*, E3/2376, pp. 38-43, ERN (En) 00192223-00192228.

[723] Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; *See* Section 7: Roles and Functions – Nuon Chea, paras 328-329; Section 8: Roles and Functions – Khieu Samphan, para. 400.

[724] Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; T. 29 March 2012 (KAING Guek Eav), pp. 22-23.

[725] Standing Committee Minutes, E3/182, 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394; T. 29 March 2012 (KAING Guek Eav), p. 22.

[726] *Khieu Samphan Report* (in FBIS Collection), E3/273, 5 January 1976, ERN (En) 00167810-00167817.

[727] *Radio Editorial Hails Promulgation of New Constitution* (in FBIS Collection), E3/273, 8 January 1976, ERN (En) 00167822; DK Constitution, E3/259, undated.

[728] DK Constitution, E3/259, undated, p. 3, Chapter 5, ERN (En) 00184835.

[729] DK Constitution, E3/259, undated, p. 3, Chapter 6, ERN (En) 00184835.

[730] DK Constitution, E3/259, undated, p. 4, Chapter 7, ERN (En) 00184836.

provided for a State Presidium – again, to be appointed by the PRA – to represent the state of DK at home and overseas.[731]

234. All this, too, was a façade. Minutes of a meeting of the CPK Standing Committee reflect the Standing Committee's view that the PRA was "worthless" and cautioned members not to "speak playfully about the Assembly in front of the people to let them see that we are deceptive".[732] Although the DK Constitution envisaged "direct and prompt general elections by secret ballot to be held throughout the country" to select the members of the PRA, no such nationwide elections were held; at best, voting took place at a limited number of locations, and it is not clear whether voters were presented with any actual choice of candidates.[733] Witnesses PRAK Yut and UNG Ren did not know that they were candidates for the PRA until they were notified by their superiors that they had been appointed, and even after their appointments they remained uncertain as to the nature of their roles and responsibilities as PRA representatives.[734] Neither of them recalled attending any meetings of the PRA or voting on any legislation.[735]

235. On 30 March 1976 – after the purported election of the PRA but prior to its inaugural session[736] – the CPK Central Committee nominated NUON Chea as chairman of the PRA Standing Committee and named KHIEU Samphan chairman of the State Presidium (*i.e.* President of Democratic Kampuchea).[737] The Central Committee also appointed several members of the government, including POL Pot (who was named Prime Minister), IENG Sary (named Deputy Prime Minister for

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[731] DK Constitution, E3/259, undated, p. 4, Chapter 8, ERN (En) 00184836.
[732] Standing Committee Minutes, E3/232, 8 March 1976, p. 3, ERN (En) 00182630.
[733] DK Constitution, E3/259, undated, p. 3, Chapter 5, ERN (En) 00184835; T. 26 January 2012 (PRAK Yut), pp. 73-74; T. 27 March 2012 (KAING Guek Eav), p. 63; T. 19 July 2012 (David CHANDLER), pp. 110-111; T. 10 January 2013 (UNG Ren), p. 28.
[734] T. 26 January 2012 (PRAK Yut), pp. 73-74; T. 10 January 2013 (UNG Ren), pp. 28, 30-31.
[735] T. 26 January 2012 (PRAK Yut), pp. 73, 75; T. 10 January 2013 (UNG Ren), pp. 28-29, 30-31.
[736] Elections purportedly took place on 20 March 1976: *See Results of National Assembly Elections Announced* (in FBIS Collection), E3/274, 21 March 1976, ERN (En) 00167985. The PRA was first convened on 11 April 1976: *see* DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976.
[737] Central Committee Decision, E3/12, 30 March 1976, p. 5, ERN (En) 00182813. *See* Section 7: Roles and Functions – Nuon Chea, paras 319; Section 8: Roles and Functions – Khieu Samphan, para. 381.

Foreign Affairs), VORN Vet (named Deputy Prime Minister for Economics and Finance) and SON Sen (named Deputy Prime Minister for National Defence).[738]

236. In April 1976, NORODOM Sihanouk announced his retirement as head of state.[739] A few days later, all members of GRUNK resigned to make way for the new government.[740] From 11 to 13 April 1976, the PRA met for its inaugural session, at which it ostensibly selected and appointed the members of the PRA Standing Committee, State Presidium and government.[741] In reality, the PRA simply rubber-stamped the choices that had already been made by the CPK.[742]

237. The government, too, was little more than an instrument of the CPK.[743] It was, as Expert David CHANDLER described it, a "government by and for [the] ruling party"; there were no balancing elements to CPK rule.[744] Government ministers and ministerial staff reported to and took directions from the CPK Standing Committee.[745] Minutes of a CPK Central Committee meeting reflect the Central Committee's view that the government "must be totally an organization of the Party".[746] Government ministers met with POL Pot – who by then served as both Prime Minister and CPK Secretary – at gatherings of the Council of Ministers.[747] At the first such meeting,

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[738] Central Committee Decision, E3/12, 30 March 1976, p. 6, ERN (En) 00182814; T. 19 July 2012 (David CHANDLER), pp. 116-117.

[739] DK Government Statement, E3/1371, 1 April 1976; T. 6 December 2012 (HUN Chhunly), pp. 58-59.

[740] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, ERN (En) 00184067-00184068.

[741] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976; DK Press Release: *First Plenary Session of the First Legislature of the People's Representative Assembly of Kampuchea*, E3/262, 14 April 1976; T. 18 July 2012 (David CHANDLER), p. 34. The PRA Standing Committee purportedly convened for a special session on 25 December 1977, but the evidence before the Chamber did not confirm whether this meeting ever actually took place: DK Government Communiqué, E3/1393, 31 December 1977, p. 7, ERN (En) 00713107.

[742] T. 19 July 2012 (David CHANDLER), p. 119; MAT Ly Interview by Stephen HEDER, E3/390, undated, pp. 28-29, ERN (En) 00436873-00436874.

[743] *See e.g.* T. 6 May 2013 (Philip SHORT), pp. 68-69 (describing the government as "a transmission belt with no authority").

[744] T. 18 July 2012 (David CHANDLER), p. 33.

[745] *See e.g.* Standing Committee Minutes, E3/223, 17 May 1976, pp. 1-3, ERN (En) 00182708-00182710; Standing Committee Minutes, E3/225, 1 June 1976, pp. 1-4, 8, ERN (En) 00182715-00182718, 00182722; Standing Committee Minutes, E3/226, 10 June 1976.

[746] Central Committee Decision, E3/12, 30 March 1976, p. 6, ERN (En) 00182814.

[747] Presentation by the Party Secretary, E3/818, 22 April 1976; Council of Ministers Meeting Minutes, E3/794, 31 May 1976; IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 30, ERN (En) 00182327.

POL Pot made it clear that the primary function of the DK government was to implement the CPK party line:

> The true nature of our new government is that of a revolutionary government of the pure worker-peasants, of the pure Communist Party of Kampuchea…members of the Government and members of the Committees in all sectors must grasp the true nature of our Government and our duties, and strive to fulfill their tasks well, following the Party line. Grasping the Party line means grasping the organizational stance of the Party and grasping the political objectives of the Party in every Sector in order to implement the policies of the Party well and correctly…
>
> …[I]n the frameworks of each of the individual ministries, it is likewise. That is, we must strive to fulfil our tasks along the Party line correctly, carefully, and completely…[748]

238. As to the third branch of the state envisaged by the DK Constitution, the judiciary, the PRA professed to create (and appoint the chairman of) a 'Judicial Committee' at its session in April 1976.[749] However, no functioning judicial system was ever established under the DK regime.[750]

239. The NUON Chea Defence submits that the Closing Order is inaccurate insofar as it suggests that the CPK was co-extensive with the DK administration.[751] However, the highest offices of state in DK – Prime Minister, President and chairman of the PRA – were occupied by senior CPK members. Other government leaders and ministers were appointed by, and reported to, the CPK. There was no functioning legislative or judicial branch. In short, DK was, in the words of KHIEU Samphan, a country where "the party leads the state".[752]

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[748] Presentation by the Party Secretary, E3/818, 22 April 1976, pp. 1-2, ERN (En) 00143461-00143462.

[749] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 22, ERN (En) 00184069.

[750] T. 6 May 2013 (Philip SHORT), p. 68; T. 26 March 2012 (KAING Guek Eav), p. 57.

[751] NUON Chea Defence Closing Statement, para. 189.

[752] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 9, ERN (En) 00156749. *See also*, T. 4 September 2012 (NORNG Sophang), p. 21 (describing the CPK as "the supreme body with the highest authority" and observing that "even the State Presidium, the People's Representative Assembly…were under the supervision of Committee 870").

5.3. Structure of the CPK military forces

5.3.1. *Formation of the Revolutionary Army of Kampuchea*

240. When the CPK/FUNK took control of Phnom Penh on 17 April 1975, the CPK military forces – which had been fighting under the banner of the Cambodian People's National Liberation Armed Forces ("CPNLAF")[753] – were under the direct control of the Zones, not the Party Centre.[754] On 22 July 1975, POL Pot announced the formation of a new Revolutionary Army of Kampuchea ("RAK"), bringing a number of Zone military brigades under the control of the Central Committee – specifically, under the command of the General Staff, headed by SON Sen.[755] The units created under the General Staff ("Centre Divisions") included Division 164, the navy; Division 170; Division 290; Division 310; Division 450; Division 502, the air force; Division 703; Division 801; and Division 920.[756] Several 'independent regiments' were also established under the General Staff, each tasked with a specific function: examples included a tank unit, an artillery unit and the S-21 Security

[753] *See e.g. Cambodians Urged to Unite in New Year's Offensive* (in FBIS Collection), E3/30, 31 December 1974, p. 2, ERN (En) 00166659.

[754] KHIEU Samphan Interview Transcript, E3/4045, undated, p. 1, ERN (En) 00790538; T. 28 March 2012 (KAING Guek Eav), pp. 32-33.

[755] T. 24 October 2012 (KUNG Kim), p. 110; T. 28 March 2012 (KAING Guek Eav), pp. 32-33; LOHN Dos Interview Record, E3/426, 23 July 2009, pp. 2-3, ERN (En) 00364070-00364071; *Revolutionary Flag*, E3/5, August 1975, p. 13, ERN (En) 00401488; Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 88, ERN (En) 00105137; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 94, ERN (En) 00678542.

[756] RAK General Staff Document: *Joint Statistics of Armed Forces – March 1977*, E3/849, 7 April 1977; T. 28 March 2012 (KAING Guek Eav), p. 33; T. 2 April 2012 (KAING Guek Eav), p. 64; T. 9 January 2013 (UNG Ren), pp. 52-53; T. 11 January 2013 (CHHAOM Se), p. 42; KOY Mon Interview Record, E3/369, 29 May 2008, p. 3, ERN (En) 00272715; LONH Dos Interview Record, E3/70, 20 November 2009, pp. 5-6, ERN (En) 00407789-00407790; SRENG Thi Interview Record, E3/5263, 6 January 2009, p. 3, ERN (En) 00282224; U.S. Department of Defense Report, E3/5700, June 2000, p. 3, ERN (En) 00387265; DK Military Meeting Minutes, E3/822, 16 September 1976; Book by HUY V.: *The Khmer Rouge Division 703: From Victory to Self-Destruction*, E3/2117, pp. 6-7, ERN (En) 00081291-00081292; Book by S. COLM and S. SIM: *Khmer Rouge Purges in the Mondul Kiri Highlands*, E3/1664, p. 45, ERN (En) 00397617.

Office.[757] Divisions were re-organised and re-named on more than one occasion after 1975.[758]

241. The role of the RAK was set out in Article 19 of the DK Constitution: its functions were to "defend the State power of the Kampuchean people and of […] Kampuchea", and to "help build a country growing more prosperous every day to improve and develop the people's standard of living".[759] However, the RAK was very much an army of the CPK rather than the state institutions. The CPK Statute specified that the RAK "must be in very *(sic)* part under the absolute leadership monopoly of the Communist Party of Kampuchea".[760] The CPK magazine *Revolutionary Flag* similarly described the RAK as "pure" and "resolutely committed to the Party".[761]

5.3.2. ***Structure of the RAK***

242. As with the civilian administrative structures of the CPK, the RAK was arranged in a pyramidal hierarchy. At the top (albeit subject to the supervision of the Central Committee and the Military Committee) was the General Staff.[762] The General Staff was in overall command of the Centre Divisions and dealt with military affairs such as supply, logistics, arms, personnel, communications and information.[763]

243. Immediately below the General Staff were the Centre Divisions and independent regiments, each of which was led by a Division Commander.[764] The

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[757] T. 28 March 2012 (KAING Guek Eav), pp. 28, 46; SOKH Chhay Interview Record, E3/5537, 27 October 2009, p. 4, ERN (En) 00404293; Book by D. CHANDLER: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 14, ERN (En) 00192693.

[758] *See e.g.* POL Nhan Interview Record, E3/5554, 31 August 2009, p. 4, ERN (En) 00377400; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 6, ERN (En) 00766452; IENG Phan Interview Record, E3/419, 23 November 2009, p. 4, ERN (En) 00411005.

[759] DK Constitution, E3/259, undated, pp. 5-6, ERN (En) 00184837-00184838.

[760] CPK Statute, E3/130, undated, p. 25, Article 27, ERN (En) 00184046.

[761] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 15, ERN (En) 00491408, ERN (Kh) 00063016-0063018. The Chamber relies on the original Khmer document. *See also*, DK Telegram, E3/915, 31 December 1977, ERN (En) 00184995, in which "we who have the duty to defend the maritime spearhead" – i.e. Division 164, the navy – vows to "fashion forces who are a tool absolutely to defend the Party" as well as the State.

[762] T. 11 July 2013 (Stephen HEDER), p. 81; T. 26 March 2012 (KAING Guek Eav), p. 27.

[763] T. 4 October 2012 (MEAS Voeun), p. 11; T. 10 January 2013 (UNG Ren), p. 86; LOHN Dos Interview Record, E3/426, 23 July 2009, pp. 2-4, ERN (En) 00364070-00364072; KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 8, ERN (En) 00346152; KOY Mon Interview Record, E3/369, 29 May 2008, pp. 3-4, ERN (En) 00272715-00272716; RAK General Staff Logistics Committee Report, E3/1167, 29 March 1977; RAK General Staff Statistics, E3/1048, 7 April 1977.

[764] T. 4 October 2012 (MEAS Voeun), p. 11.

Centre Divisions were sub-divided into smaller units. Typically, there were three regiments to a Division; three battalions to a regiment; three companies to a battalion; three platoons to a company; three squads to a platoon; and around 12 soldiers to a squad.[765] At the level of the company and above, each echelon was headed by a commanding officer (also known as a 'chairman' or 'commissar'), usually assisted by two subordinates.[766]

244. A number of witnesses indicated that there was an additional command level between the regiments and the Divisions: specifically, that three regiments made up a 'brigade', and that each Division comprised around three such brigades.[767] Precise organisational structures may therefore have varied between the Divisions.

5.3.3. ***Regional and guerrilla forces***

245. Both the DK Constitution and the CPK Statute distinguished between three branches of the RAK: the "regular" forces, the "regional" or "Sector" forces and the "guerrilla" forces or "militia".[768] The evidence put before the Chamber did not clearly differentiate between the structure of the 'regular' and the 'regional' forces; however, it did establish that Sectors and Districts maintained their own military forces, separate from the Centre Divisions, primarily for the purpose of territorial defence.[769] Moreover, even after POL Pot's reorganisation of the military in 1975, some divisions remained under the direct control of Zone leaders.[770]

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[765] T. 9 January 2013 (UNG Ren), p. 57; T. 11 January 2013 (CHHAOM Se), pp. 75, 77; POL Nhan Interview Record, E3/5554, 31 August 2009, p. 5, ERN (En) 00377401; CHUM Cheat Interview Record, E3/5504, 8 October 2009, p. 3, ERN (En) 00398835; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 3, ERN (En) 00403579 .

[766] T. 23 April 2013 (CHHOUK Rin), pp. 42, 56; T. 24 April 2013 (CHUON Thi), pp. 90-91; T. 2 May 2013 (LIM Sat), p. 68; Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 90, ERN (En) 00105139.

[767] T. 8 October 2012 (MEAS Voeun), pp. 85-86; T. 23 April 2013 (CHHOUK Rin), p.43; T. 20 May 2013 (IENG Phan), p. 10; SUOS Siyat Interview Record, E3/5145, 17 January 2008, p. 4, ERN (En) 00204707. *See also*, T. 3 May 2013 (LIM Sat), p. 43 (describing brigades as sub-units of divisions, but omitting reference to regiments).

[768] DK Constitution, E3/259, undated, p. 5, Article 19, ERN (En) 00184837; CPK Statute, E3/130, undated, p. 25, Article 27, ERN (En) 00184046.

[769] T. 20 June 2012 (YUN Kim), pp. 19-20; T. 1 October 2012 (KHIEV En), pp. 7-8; T. 4 October 2012 (MEAS Voeun), pp. 101-102; T. 8 January 2013 (SA Vi), pp. 8, 29; CHEA Chinit Interview Record, E3/5534, 30 December 2009, p. 2, ERN (En) 00425879.

[770] Book by E. BECKER: *When The War Was Over*, E3/20, 1986, p. 180, ERN (En) 00237885; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 28, ERN (En) 00142853. *See*

246. In addition to the Zone, Sector and District armies, there also existed local militias, which were under the control of the sub-district leaders and which were responsible for security and discipline in the villages, communes and co-operatives.[771]

also, CPK Statute, E3/130, undated, p. 7, Article 1, ERN (En) 00184208 (distinguishing between the "Regular Army of the Centre" and the "Regular Army of the Zone").

[771] T. 10 January 2012 (KLAN Fit), p. 106; T. 5 June 2012 (SAO Sarun), p. 84; T. 19 June 2012 (YUN Kim), p. 23; SAO Phen Interview Record, E3/374, 21 May 2009, p. 4, ERN (En) 00336533; KHUN Kim Interview Record, E3/422, 30 November 2009, p. 5, ERN (En) 00414066; SENG Srun Interview Record, E3/1692, 11 August 2008, pp. 3-5, ERN (En) 00242086-00242088.

6. COMMUNICATION STRUCTURE

6.1. Methods of Communication

6.1.1. *Telegrams*

247. Prior to 1975, the CPK used telegrams to communicate both within Cambodia and externally with contacts in foreign countries. For example, telegrams were used to send messages between the Zones and the Party leaders in their headquarters, and also to make contact with FUNK and GRUNK representatives in Vietnam and China.[772]

248. After the seizure of Phnom Penh in 1975, CPK telegraph offices were established in the city.[773] Telegrams were transmitted and received at K-18, and were encrypted or decrypted as necessary either at K-1 or at an office within Sothearos School.[774] Zones, Autonomous Sectors, Sectors and Divisions around the country also maintained their own telegraph units.[775] The system remained in place until the arrival of the Vietnamese in Phnom Penh in 1979.[776] Telegrams were primarily used for long-distance communication; the various offices of the Party Centre would not typically use telegrams to contact each other within Phnom Penh.[777]

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[772] T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 7; T. 11 December 2012 (PHAN Van), p. 99; T. 7 December 2011 (LONG Norin), pp. 69-70; T. 14 December 2012 (SUON Kanil), p. 54; T. 29 August 2012 (NORNG Sophang), pp. 44-45. From 1971 to 1975 IENG Sary acted as the FUNK/GRUNK 'Special Envoy' in China, charged with managing communications between the CPK and China, monitoring NORODOM Sihanouk on behalf of the CPK and recruiting FUNK/GRUNK intellectuals to the CPK: T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 97-98; T. 6 May 2013 (Philip SHORT), pp. 103, 104; IENG Sary Interview by Steve HEDER, E3/89, 17 December 1996, pp. 10-11, ERN (En) 00417608-00417609; *Cambodia – Fall of the High Flyer* (Far Eastern Economic Review), E3/3443, 22 August 1996, p. 1, ERN (En) 00149280; *Samdech and Madame Sihanouk Arrive in Peking* (Peking Review), E3/3710, 9 June 1972; Book by N. CHANDA: *Brother Enemy: The War After The War*, E3/2376, p. 70, ERN (En) 00192255; Book by E. BECKER: *When The War Was Over*, E3/20, 1986, p. 199, ERN (En) 00237904.

[773] T. 29 August 2012 (NORNG Sophang), pp. 68-69.

[774] T. 29 August 2012 (NORNG Sophang), pp. 56, 70-71; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758.

[775] T. 29 August 2012 (NORNG Sophang), p. 55 (stating that "each base, zone and sector, and every unit of a division", had communications and telegraph sections); T. 14 December 2012 (SUON Kanil), pp. 46, 95 (confirming that Zones, Sectors and battlefield commanders used telegrams); T. 7 June 2012 (SAO Sarun), p. 16 (giving the location of the telegraph office in Autonomous Sector 105); PHAN Sovannhan Interview Record, E3/44, 11 March 2009, pp. 3-4, ERN (En) 00295161-00295162 (confirming the existence of the telegraph office in Autonomous Sector 105); T. 4 October 2012 (MEAS Voeun), p. 22 (describing telegraph communication with a military Division).

[776] T. 29 August 2012 (NORNG Sophang), p. 77.

[777] T. 4 September 2012 (NORNG Sophang), p. 37; T. 30 May 2012 (NY Kan), p. 79; LONH Dos Interview Record, E3/70, 20 November 2009, p. 4, ERN (En) 00407788.

249. Most, but not all, CPK telegrams were encrypted before transmission.[778] Unencrypted messages were sent in Morse code.[779] Secret messages were encrypted using a substitution cipher.[780] Additional layers of encryption were used for highly confidential messages, such as those pertaining to cadres' travel plans.[781] Special code numbers were also used to refer to specific individuals, locations and offices.[782]

250. Telegrams were generally encrypted (or decrypted) and transmitted (or received) by different people.[783] Thus, outgoing telegrams were usually prepared in writing and delivered to an 'encoder'; the encrypted messages were then sent to a separate telegraph operator for transmission.[784] At the other end, the encrypted messages were received and transcribed by another telegraph operator, before being taken to a 'decoder' for decryption.[785] The decrypted messages were then delivered by messenger to the final recipients.[786] Witness NORNG Sophang, who ran the telegram encryption and decryption unit at Sothearos School from 1975 onwards,[787] confirmed that this separation of responsibilities was intended to "preserve the principle of secrecy" within the CPK.[788]

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[778] T. 14 December 2012 (PHAN Van), p. 12; T. 29 August 2012 (NORNG Sophang), p. 64; T. 3 September 2012 (NORNG Sophang), p. 25.

[779] T. 29 August 2012 (NORNG Sophang), p. 64; T. 17 December 2012 (SUON Kanil), pp. 51-52.

[780] T. 3 September 2012 (NORNG Sophang), pp. 20-22 (describing the use of a "table of 100 squares" to encrypt text); Attachment to NORNG Sophang Interview Record, E3/1732, undated; T. 11 December 2012 (PHAN Van), p. 101 (referring to a "10-digit coding" system); KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 5, ERN (En) 00204757.

[781] T. 3 September 2012 (NORNG Sophang), pp. 24-25;T. 11 December 2012 (PHAN Van), p. 101.

[782] KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506.*See e.g.* T. 3 September 2012 (NORNG Sophang), p. 83 (stating that "47" was a code number for SON Sen); T. 28 March 2012 (KAING Guek Eav), p. 87 (stating that "89" and "62" were code numbers for SON Sen); SUON Kanil Interview Record, E3/344, 18 August 2009, p. 9, ERN (En) 00384430 (stating that "18", "25" and "35" were code numbers for KE Pauk). *See also*, Section 5: Administrative Structures.

[783] T. 11 December 2012 (PHAN Van), p. 101; T. 17 December 2012 (SUON Kanil), p. 51.

[784] T. 7 June 2012 (SAO Sarun), pp. 16-17; T. 29 August 2012 (NORNG Sophang), p. 39; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758.

[785] T. 11 December 2012 (PHAN Van), p. 101; T. 14 December 2012 (SUON Kanil), pp. 81-82; T. 29 August 2012 (NORNG Sophang), p. 39; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758; PON Ol Interview Record, E3/373, 7 May 2009, pp. 4-5, ERN (En) 00336527-00336528.

[786] T. 13 June 2012 (OEUN Tan), pp. 63-64; T. 29 August 2012 (NORNG Sophang), p. 39.

[787] T. 6 September 2012 (NORNG Sophang), p. 83; T. 29 August 2012 (NORNG Sophang), p. 55.

[788] T. 6 September 2012 (NORNG Sophang), pp. 64-65.

6.1.2. *Mail*

251. The various organs of the Party Centre and the Zones, Sectors, Districts and sub-district entities also communicated with each other by letter.[789] Although telegrams were generally preferred for long-distance communications, lengthier messages and reports were sent by mail, which was delivered by messengers.[790] In Phnom Penh, incoming mail for the Party Centre was generally directed through K-7, the messenger unit.[791] Zones, Sectors and Districts had their own messenger networks.[792]

6.1.3. *Telephone*

252. Evidence before the Chamber proves that some of the leaders, offices and units of the Party Centre and the DK Government communicated with each other by telephone.[793] However, not all of the offices in Phnom Penh were connected to each other through the telephone network.[794]

253. The evidence before the Chamber is inconclusive as to whether officials at the Zone or Sector level also had access to telephone connections.[795] Certain military units, including Division 164 (the navy), occasionally reported to the Party Centre by

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[789] T. 13 June 2012 (OEUN Tan), p. 62 (recalling carrying letters between K-1 and K-7); T. 6 December 2011 (KLAN Fit), p. 61 (describing a letter being sent from the Party Centre to a sub-district, via the Zone and Sector levels); T. 4 April 2012 (KAING Guek Eav), pp. 89-90 (referring to a letter from Witness KAING Gueak Eav to SON Sen); SON Sen Letter to KAING Guek Eav, E3/1047, 5 October 1977.

[790] T. 14 December 2012 (SUON Kanil), p. 68.

[791] T. 3 September 2012 (NORNG Sophang), pp. 15-16.

[792] U.S. Department of Defense Report, E3/391, January 2001, p. 2, ERN (En) 00387344.

[793] T. 26 March 2012 (KAING Guek Eav), p. 94 (describing telephone conversations between SON Sen and Witness KAING Guek Eav at S-21); T. 27 March 2012 (KAING Guek Eav), p. 37 (stating that a telephone connection was in place at the office near Borei Keila where Witness KAING Guek Eav met SON Sen); T. 28 March 2012 (KAING Guek Eav), p. 91 (referring to a telephone at K-7); T. 24 April 2012 (SALOTH Ban), pp. 10-11 (mentioning the receipt of telephone calls at the Ministry of Foreign Affairs); T. 16 August 2012 (SA Siek), pp. 102-103 (describing a telephone call received at the Ministry of Propaganda); T. 3 September 2012 (NORNG Sophang), pp. 59-60 (stating that telephone calls were made to the telegram encryption and decryption unit at Sothearos School); T. 17 June 2013 (LENG Chhoeung), pp. 12-13 (confirming that KHIEU Samphan had a telephone in his office at K-3). *See also*, T. 5 September 2012 (NORNG Sophang), p. 71; T. 10 June 2013 (SO Socheat), p. 76.

[794] *See e.g.* T., 3 September 2012 (NORNG Sophang), p. 60 (indicating that the telegram decoding office at Sothearos School only had a telephone connection to three other Party Centre offices, and not to the Zones).

[795] *See e.g.* T. 28 May 2012 (NY Kan), p. 41 (stating that the Sector 32 committee did not have access to a telephone).

telephone.[796] However, in a meeting with senior officers in December 1976, SON Sen cautioned military personnel to avoid "liberal use" of the telephone so as to prevent the interception of communications by "the enemy".[797]

6.1.4. ***Radio***

254. Prior to 1975, a FUNK radio station in Hanoi – staffed mainly by CPK members, including IENG Thirith – broadcast revolutionary propaganda in Khmer to Cambodians in Cambodia and abroad.[798] The CPK also maintained a mobile radio broadcast unit in Cambodia, which had a more limited transmission range, and which similarly broadcast news, propaganda and revolutionary messages.[799]

255. After the fall of Phnom Penh in 1975, the CPK established a radio station in the capital at Stung Meanchey.[800] The station broadcast news, propaganda, music, recordings of speeches by the CPK senior leaders (including NUON Chea and KHIEU Samphan) and recordings of interviews with CPK leaders (including KHIEU Samphan).[801]

256. The Ministry of Propaganda and Information was responsible for preparing material for broadcast, under the guidance and close scrutiny of the Standing

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[796] T. 5 September 2012 (NORNG Sophang), p. 45. *See e.g.* DK Report, E3/928, 1 April 1978 (summarising a "secret telephone" message from Division 164); DK Report, E3/859, 15 April 1978 (referring to a "confidential phone conversation"); DK Military Report, E3/1082, 12 August 1977 (containing a report from Division 164 made "via secret telephone").

[797] DK Military Meeting Minutes, E3/804, 15 December 1976, p. 11, ERN (En) 00233720.

[798] T. 7 December 2011 (LONG Norin), pp. 65-66; T. 2 August 2012 (SUONG Sikoeun), pp. 91, 93-96; T. 25 September 2012 (NOEM Sem), pp. 19, 21, 69; SA Siek Interview Record, E3/379, 24 March 2009, p. 9, ERN (En) 00323329.

[799] T. 15 August 2012 (SA Siek), pp. 80-83, 85; US Department of Defense Report, E3/5702, January 2001, p. 2, ERN (En) 00387392; Interview with CHEA Sim, E3/1568, 3 December 1991, p. 10, ERN (En) 00651871.

[800] Standing Committee Minutes, E3/225, 1 June 1976, p. 2, ERN (En) 00182716; SÂ Siek Interview Record, E3/379, 24 March 2009, p. 9, ERN (En) 00323329.

[801] T. 15 August 2012 (SA Siek), p. 106 (mentioning a "news reading section" at the Ministry of Propaganda); T. 20 August 2012 (SA Siek), p. 75 (confirming that recordings of leaders' speeches were played on the radio); T. 18 April 2012 (SAUT Toeung), p. 79 (recalling listening to speeches by NUON Chea on the radio); T. 20 September 2012 (CHEA Say), p. 39 (recalling listening to speeches by KHIEU Samphan on the radio); T. 25 September 2012 (NOEM Sem), pp. 23-25 (referring to the broadcasting of news, songs and propaganda); CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 9, ERN (En) 00288206 (mentioning an interview with KHIEU Samphan broadcast on the radio). *See* Section 8: Roles and Functions – Khieu Samphan, para. 367.

Committee.[802] Radio programs reported on matters such as agriculture, construction projects, arrests and perceived enemies, and exhorted listeners to work hard, defend the country and follow the Party line.[803] One program was targeted in particular at Khmer listeners in Kampuchea Krom.[804] Another program, broadcast at least partially in Vietnamese, consisted of recordings of the confessions of Vietnamese soldiers captured in Cambodia.[805] In March 1976, the Standing Committee ordered frequent radio broadcasts on the topic of the forthcoming 'elections', observing that "if we do not broadcast they [enemies] will say we are dictators and there is no democracy".[806]

257. The Ministry of Foreign Affairs also prepared propaganda for foreign consumption: radio programs on the situation in DK were broadcast in Vietnamese, English, French and Chinese.[807]

258. At some work sites in Cambodia, loudspeakers were installed so that local people could listen to the CPK radio station.[808] Witness CHEA Say recalled that he and his colleagues listened to a shared radio at K-12, but did not have personal radio

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[802] T. 22 August 2012 (KIM Vun), pp. 38-39; KIM Vun Interview Record, E3/381, 28 July 2009, pp. 3-4, ERN (En) 00365528-00365529; T. 25 September 2012 (NOEM Sem), pp. 23-24. *See also*, Standing Committee Minutes, E3/225, 1 June 1976 (showing that the Standing Committee gave detailed instructions as to e.g. the content of broadcasts and the number and background of writers); Standing Committee Minutes, E3/228, 9 January 1976.

[803] CHUM Cheat Interview Record, E3/5504, 8 October 2009, p. 6, ERN (En) 00398838 ("I heard from radio broadcasting that Ta Thuch, HUO Nim and HUO Yun had been arrested"); T. 15 August 2012 (SÂ Siek), pp. 80-81 (confirming that information was broadcast on the radio concerning the conflict with Vietnam, and stating that radio broadcasts were "meant to educate people to understand the aggressive neighbours" and that listeners "were told to devote themselves to defend, to fight, to protect the country and territory"); T. 16 August 2012 (SA Siek), pp. 73-75 (confirming that radio broadcasts sought to encourage the people and addressed matters such as the Party line, the construction of canals and the defence of the country); T. 25 September 2012 (NOEM Sem), p. 23 (referring to the reading of articles "encouraging the people to dig canals, [and] to build dams", as well as articles on the defeat of LON Nol and the Americans, on the radio); PES Math Interview Record, E3/352, 18 March 2008, p. 4, ERN (En) 00195709 ("I heard there was a war and arrests of Vietnamese on the radio").

[804] T. 22 August 2012 (KIM Vun), p. 39; KIM Vun Interview Record, E3/381, 28 July 2009, pp. 3-4, ERN (En) 00365528-00365529.

[805] T. 22 August 2012 (KIM Vun), pp. 38-39; T. 16 August 2012 (SÂ Siek), p. 79; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 9, ERN (En) 00766455.

[806] Standing Committee Minutes, E3/231, 8 March 1976, p. 1, ERN (En) 00183360.

[807] T. 6 August 2012 (SUONG Sikoeun), pp. 38-39; T. 22 August 2012 (KIM Vun), pp. 70-71.

[808] T. 24 April 2013 (CHUON Thi), pp. 80-81.

sets.[809] Ordinary people in Cambodia did not generally have free access to information through the radio in the DK period.[810]

259. Public radio broadcasts emanating from Cambodia (and other countries in the region) were monitored, recorded and translated by United States government personnel in Thailand. Reports of the broadcasts were transmitted to U.S. embassies around the world by teletype as part of the 'Foreign Broadcast Information Service' ('FBIS').[811] Forty-nine compilations of FBIS reports were put before the Chamber in the course of the trial.[812]

260. Summaries and transcriptions of DK radio broadcasts were also compiled, translated into English and published by the British Broadcasting Corporation ('BBC') as part of its 'Summary of World Broadcasts' ('SWB') service.[813] Forty-five collections of SWB reports were put before the Chamber in the course of the trial.[814]

6.1.5. ***Magazines***

261. Beginning in the period before 1975, the CPK published Party magazines entitled *Revolutionary Flag* and *Revolutionary Youth* approximately on a monthly

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[809] T. 20 September 2012 (CHEA Say), p. 39. *See also*, T. 7 December 2012 (HUN Chhunly), pp. 114-115 (recalling an occasion on which he and his colleagues were convened to listen to a radio news broadcast).

[810] T. 7 December 2012 (HUN Chhunly), pp. 28-29 (stating that listening to a personal radio was a "risk").

[811] T. 11 July 2013 (Stephen HEDER), p. 70. *See also*, T. 19 July 2012 (David CHANDLER), p. 132.

[812] FBIS Collections, E3/30, E3/75, E3/76, E3/77, E3/118, E3/119, E3/120, E3/143, E3/147, E3/271, E3/272, E3/273, E3/274, E3/275, E3/276, E3/277, E3/278, E3/279, E3/280, E3/281, E3/282, E3/283, E3/284, E3/285, E3/286, E3/287, E3/288, E3/289, E3/290, E3/291, E3/292, E3/293, E3/294, E3/295, E3/296, E3/488, E3/1339, E3/1355, E3/1356, E3/1357, E3/1358, E3/1359, E3/1360, E3/1361, E3/1362, E3/1363, E3/1364, E3/1365, E3/1366, January 1975 – January 1979. The Chamber has only relied on those parts of the FBIS Collections that are relevant and that have been translated into all of the ECCC's working languages. However, on an exceptional basis and in order to ensure a complete presentation of evidence, the Chamber has had regard to FBIS reports available only in English where they corroborate other pieces of evidence.

[813] Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. xi, ERN (En) 00678493 (indicating that the SWB reports were compiled by the BBC). *See also, Statement Submitted by Amnesty International* (ECOSOC), E3/4198, August 1978, p. 2, ERN (En) 00271505.

[814] SWB Collections, E3/133, E3/298, E3/299, E3/301, E3/686, E3/1241, E3/1280, E3/1349, E3/1350, E3/1372, E3/1376, E3/1378, E3/1379, E3/1380, E3/1381, E3/1400, E3/1402, E3/1403, E3/1404, E3/1405, E3/1406, E3/1407, E3/1408, E3/1410, E3/1412, E3/1413, E3/1414, E3/1415, E3/1418, E3/1423, E3/1486, E3/1487, E3/1590, E3/1751, E3/2306, E3/2674, E3/2726, E3/2728, E3/2730, E3/3165, E3/3742, E3/3743, E3/3749, E3/5710.

basis.[815] Prior to 1975, *Revolutionary Flag* was prepared and circulated in secret: it was written by hand, and a small number of copies were made for distribution.[816]

262. From 1975 onwards, *Revolutionary Flag* magazines were typewritten, and copies were produced by offset printing.[817] Both *Revolutionary Flag* and *Revolutionary Youth* were printed at the K-25 and K-26 facilities, which came under the authority of the Ministry of Propaganda and Information, headed by HOU Nim.[818] Witness KIM Vun, who worked for the Ministry of Propaganda and Information, was unable to give a precise estimate of the number of copies printed. However, for each issue he recalled seeing "stacks of magazines" being prepared for delivery.[819]

263. *Revolutionary Flag* and *Revolutionary Youth* magazines were distributed only to CPK members, although not every member was given his own copy.[820] Copies were expected to be shared amongst several members.[821] Copies were delivered to DK Ministries, military units and offices of the Party Centre, and to officials at the Zone, Sector, District and sub-district levels.[822]

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[815] T. 5 April 2012 (KAING Guek Eav), pp. 111-112; T. 21 August 2012 (KIM Vun), pp. 81-82; T. 18 April 2012 (SAUT Toeung), p. 63; T. 22 August 2012 (KIM Vun), p. 72.

[816] T. 10 January 2012 (NUON Chea), pp. 7-8; T. 30 January 2012 (NUON Chea), p. 42; T. 15 December 2011 (NUON Chea), p. 73; T. 5 April 2012 (KAING Guek Eav), pp. 111-112.

[817] T. 23 August 2012 (KIM Vun), p. 20. It is possible that only the cover pages were printed using the offset printing technique: s*ee* T. 21 August 2012 (KIM Vun), p. 79; T. 23 August 2012 (KIM Vun), p. 21.

[818] T. 21 August 2012 (KIM Vun), pp. 77-79; T. 29 March 2012 (KAING Guek Eav), p. 20; T. 15 August 2012 (SA Siek), p. 78; T. 1 October 2012 (KHIEV En), p. 15. After HOU Nim's arrest in 1977, the Ministry of Propaganda merged with the Ministry of Education, and YUN Yat took control of the combined Ministry: S-21 Confession – HU Nim, E3/1550, 18 May 1977; T. 29 March 2012 (KAING Guek Eav), p. 20; T. 1 October 2012 (KHIEV En), p. 28; T. 15 August 2012 (SA Siek), p. 107.

[819] T. 21 August 2012 (KIM Vun), pp. 95, 97.

[820] T. 22 August 2012 (KIM Vun), p. 51; T. 18 July 2012 (David CHANDLER), p. 47; T. 14 December 2012 (SUON Kanil), p. 51; T. 8 April 2013 (CHHAOM Se), p. 55; Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 87, ERN (En) 00105136.

[821] T. 23 April 2013 (CHHOUK Rin), p. 35.

[822] T. 27 March 2012 (KAING Guek Eav), pp. 20-21 (stating that multiple copies of *Revolutionary Flag* were delivered to S-21); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 30 (stating that copies of *Revolutionary Flag* and *Revolutionary Youth* "were distributed to all ministries"); CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 5, ERN (En) 00513315 (recalling that magazines with two or five flags on the covers were distributed to the Youth League, and that he could read these magazines because they were sent to the units); T. 24 April 2013 (CHUON Thi), p. 64 ("*Revolutionary Flag* magazines were distributed tosoldiers for reading"); T. 21 August 2012 (KIM Vun), pp. 95-97 (indicating that *Revolutionary Flag* magazines were distributed to people in the Zones and Sectors); T. 26 January 2012 (PRAK Yut), pp. 42-43 (recalling seeing *Revolutionary Flag* magazines at the Sector office); T. 19 June 2012 (YUN Kim), p. 18 (indicating that copies of *Revolutionary Flag* were passed on by the District committee to Witness YUN Kim, a commune chief); T. 12 December 2012 (PHAN

264. NUON Chea initially denied that he played any role in "establishing" the *Revolutionary Flag* publication.[823] However, he subsequently admitted that *Revolutionary Flag* was written by members of the Standing Committee, principally himself and POL Pot.[824] This was consistent with NUON Chea's admitted role as "a candidate in charge of propaganda and writing articles for the news papers" for the Indochina Communist Party and the Khmer People's Revolutionary Party – forerunners of the CPK[825] – in the 1950s.[826] NUON Chea later changed his position again, denying that he was the author of any articles published in *Revolutionary Flag* and claiming that POL Pot had "a personal assistant who was fully in charge of writing the articles".[827] Shortly thereafter, NUON Chea refused to submit to further cross-examination.[828] In light of his previous admissions and the sporadic exercise of his right to remain silent, the Chamber finds NUON Chea's denial implausible, and is satisfied that he was indeed one of the principal authors of the *Revolutionary Flag* magazine.[829]

265. The CPK considered it important that its members read *Revolutionary Flag*.[830] *Revolutionary Flag* was frequently used for educational purposes at CPK political study or training sessions.[831] *Revolutionary Youth* was targeted in particular at members of the CPK Youth League.[832] The magazines contained material such as

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Van), p. 15 (stating that *Revolutionary Flag* and *Revolutionary Youth* were distributed to the co-operatives); KIM Vun Interview Record, E3/380, 25 July 2009, p. 6, ERN (En) 00365645 (stating that *Revolutionary Flag* was distributed to the Zone, Sector and District levels); T. 1 October 2012 (KHIEV En), p. 42 (confirming that *Revolutionary Flag* was sent to Witness KHIEV En's section in the Ministry of Propaganda); LONH Dos Interview Record, E3/70, 20 November 2009, p. 9, ERN (En) 00407793 (stating that *Revolutionary Flag* was distributed to "every office and ministry").

[823] T. 6 December 2011 (NUON Chea), p. 5. *See* Section 7: Roles and Functions – Nuon Chea, para. 311.

[824] T. 15 December 2011 (NUON Chea), pp. 73-74.

[825] T. 22 November 2011 (NUON Chea), p. 78; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, undated, p. 6, ERN (En) 00716414; Article by L. SUMMERS: *The CPK: Secret Vanguard of Pol Pot's Revolution: A Comment on Nuon Chea's Statement*, E3/53, March 1987, p. 6, ERN (En) S 00045870.

[826] T. 31 January 2012 (NUON Chea), pp. 8-9; Article by NUON C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, undated, p. 9-10, ERN (En) 00716417-00716418.

[827] T. 9 July 2013 (NUON Chea), p. 20.

[828] T. 17 July 2013 (NUON Chea), p. 68.

[829] *See* Section 7: Roles and Functions – Nuon Chea, para. 311.

[830] T. 21 August 2012 (KIM Vun), p. 94; T. 20 March 2012 (KAING Guek Eav), p. 12.

[831] T. 28 May 2012 (NY Kan), p. 16; T. 27 March 2012 (KAING Guek Eav), pp. 20-21; T. 19 June 2012 (YUN Kim), pp. 18, 26; T. 22 April 2013 (CHHOUK Rin), pp. 65-66; T. 23 April 2012 (SALOTH Ban), p. 18.

[832] T. 22 August 2012 (KIM Vun), p. 73. *See e.g. Revolutionary Youth*, E3/729, October 1975, p. 2, ERN (En) 00357901 (referring specifically to the "Youth League").

speeches and presentations given by the CPK leaders;[833] articles on the history of the CPK, the purported achievements of the DK regime and the Party line generally;[834] details of plans for the future;[835] instructions from the Party to its members;[836] and, at least in *Revolutionary Youth*, poetry with revolutionary themes, some of which shows a clear attempt by the CPK to incite and indoctrinate young people.[837]

266. Twenty-four different issues of the *Revolutionary Flag* magazine and 28 issues of *Revolutionary Youth* were put before the Trial Chamber during Case 002/01.[838] In the course of the trial, the NUON Chea Defence challenged the authenticity of the copies of these magazines on the Case File.[839] Witness Stephen HEDER subsequently testified as to the provenance and authenticity of copies of each publication,[840] and Witness KIM Vun was similarly able to confirm that a copy of *Revolutionary Flag* on the Case File was genuine.[841] The Chamber also heard evidence from Witnesses VANTHAN Dara Peou and CHHANG Youk of DC-Cam as to the circumstances in which the magazines were obtained, stored, digitised and authenticated before being placed on the Case File.[842] The Chamber also notes that in spite of his challenges to their reliability, the NUON Chea Defence has relied extensively on copies of *Revolutionary Flag* and *Revolutionary Youth* on the Case File as evidence in its

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[833] *See e.g. Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 13-44, ERN (En) 00491406-00491437; *Revolutionary Flag*, E3/10, September-October 1976, pp. 4-16, ERN (En) 00450504-00450516; *Revolutionary Flag*, E3/215, September 1978, pp. 3-26, ERN (En) 00488616-00488639.

[834] *See e.g. Revolutionary Flag*, E3/747, August 1978, pp. 16-24, ERN (En) 00499781-00499789; *Revolutionary Flag*, E3/736, October-November 1977, pp. 1-41, ERN (En) 00182548-00182588; *Revolutionary Flag*, E3/746, July 1978, pp. 15-19, ERN (En) 00428303-00428307; *Revolutionary Youth*, E3/768, March 1977, pp. 10-18, ERN (En) 00525946-00525954.

[835] *See e.g. Revolutionary Flag*, E3/748, October-November 1975, pp. 14-17, ERN (En) 00495813-00495816; *Revolutionary Flag*, E3/743, July 1977, pp. 3-7, ERN (En) 00476158-00476162.

[836] *See e.g. Revolutionary Flag*, E3/135, June 1977, pp. 30-36, ERN (En) 00446875-00446881; *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506.

[837] *See e.g. Revolutionary Youth*, E3/729, October 1975, pp. 30-31, ERN (En) 00357929-00357930; *Revolutionary Youth*, E3/734, July 1976, pp. 29-30, ERN (En) 00360804-00360805.

[838] *Revolutionary Flag*, E3/4, E3/5, E3/10, E3/11, E3/25, E3/135, E3/139, E3/166, E3/170, E3/193, E3/215, E3/736 (also E3/737), E3/738 (also E3/739), E3/742, E3/743, E3/744, E3/745, E3/746, E3/747, E3/748, E3/759, E3/760 (also E3/761), E3/762 and E3/4604, August 1975 – September 1978; *Revolutionary Youth*, E3/146, E3/726, E3/728, E3/729, E3/730, E3/732, E3/733, E3/734, E3/749, E3/750, E3/751, E3/752, E3/753, E3/754, E3/755, E3/756, E3/757, E3/758, E3/765, E3/766, E3/767, E3/768, E3/769, E3/770, E3/771, E3/772, E3/773 and E3/774, August 1974 – November 1978.

[839] T. 15 December 2011 (NUON Chea), pp. 77-79

[840] T. 15 July 2013 (Stephen HEDER), pp. 12-19 (referring to *Revolutionary Youth*, E3/724, July 1975 and *Revolutionary Flag*, E3/731, December 1975-January 1976).

[841] T. 22 August 2012 (KIM Vun), p. 8 (referring to *Revolutionary Flag*, E3/10, Sep-Oct 1976).

[842] *See e.g.* T. 23 January 2012 (VANTHAN Dara Peou), pp. 21-23, 93-94; T. 1 February 2012 (CHHANG Youk), pp. 75-77

closing submissions.[843] The Chamber is satisfied that the 24 copies of *Revolutionary Flag* and 28 copies of *Revolutionary Youth* on the Case File are authentic copies of the original Party magazines.

6.1.6. ***Monitoring of foreign news reports***

267. The CPK Standing Committee ordered the DK Ministry of Propaganda to "monitor news […] closely at all hours, every day" and send reports in order to make sure that appropriate measures could be taken.[844] Detailed procedures were established for the summarising and reporting of foreign news by the Ministry of Propaganda to the Standing Committee.[845] In accordance with the Standing Committee's directive, staff at the Ministry of Propaganda monitored foreign news broadcasts in English and French.[846] Reports from overseas news agencies and wire services were received via teleprinter, then copied and translated into Khmer for further distribution.[847]

268. Staff at the Ministry of Foreign Affairs carried out similar work, listening to foreign radio reports on DK and preparing summary bulletins for the DK/CPK leaders.[848] Witness SUONG Sikoeun, who worked at the Ministry of Foreign Affairs from 1975 and became its Director of Information and Propaganda in 1977,[849] stated that he and his colleagues were responsible for monitoring programs in French, English, Chinese and Vietnamese.[850] They were instructed to report what they heard

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[843] *See e.g.* NUON Chea Defence Closing Submissions, paras 156, 157, 158, 163, 465, 474.

[844] Standing Committee Minutes, E3/231, 8 March 1976, p. 3, ERN (En) 00183362 (recording a work session on propaganda attended by POL Pot and NUON Chea and KHIEU Samphan).

[845] The Ministry received the following two directives: (i) to "send news to Angkar every day as normal" in accordance with the established procedures, taking care to summarise and analyse important events about the regime so that the Standing Committee could properly understand the situation and take appropriate measures – news was to be collected from the Ministry by a messenger at 5.15pm daily; (ii) in special circumstances, to "telephone and report to Angkar immediately" if something important happened: *see* Standing Committee Minutes, E3/231, 8 March 1976, p. 3, ERN (En) 00183362.

[846] T. 1 October 2012 (KHIEV En), pp. 19-20

[847] T. 1 October 2012 (KHIEV En), pp. 19-20; T. 16 August 2012 (SA Siek), pp. 69-70; Standing Committee Minutes, E3/225, 1 June 1976, p. 2, ERN (En) 00182716.

[848] T. 6 August 2012 (SUONG Sikoeun), pp. 40-41; Laurence PICQ Deposition, E3/98, 31 October 2008, p. 1, ERN (En) 00356359.

[849] T. 6 August 2012 (SUONG Sikoeun), p. 33.

[850] T. 6 August 2012 (SUONG Sikoeun), p. 40. *See also*, CHAN Youran Interview Record, E3/46, 27 November 2009, p. 4, ERN (En) 00410255 (stating that part of his role at the Ministry of Foreign Affairs involved "listening to the news on foreign radio stations").

to IENG Sary without adding or omitting anything; according to SUONG Sikoeun, IENG Sary "liked things exactly as it was and for that reason that's how it was reported to him *(sic)*".[851]

6.2. Lines of Communication

269. The CPK Statute set out the general principle that the "lower echelon must report to upper echelon on the situation and on work done", and the "upper echelon must report to lower echelons regarding the general situation and regarding instructions which they must carry out".[852]

270. In practice, each level in the CPK hierarchy communicated for the most part only with the levels immediately above and below it; outside the Party Centre, there was minimal lateral communication.[853] Sectors (excluding Autonomous Sectors), Districts and sub-district entities did not generally communicate with the Party Centre directly, but rather sent and received information only upwards or downwards through the chain of command.[854]

6.2.1. *Within the Party Centre*

271. Surviving meeting minutes indicate that the Central Committee and the Standing Committee convened regularly to discuss CPK policy.[855] In addition, the CPK senior members – including POL Pot, NUON Chea and KHIEU Samphan – met with each other in various combinations at K-1 and K-3.[856]

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[851] T. 6 August 2012 (SUONG Sikoeun), pp. 41-42.
[852] CPK Statute, E3/130, undated, p. 16, Article 6, ERN (En) 00184037.
[853] T. 30 May 2012 (NY Kan), p. 13; Case 001 Trial Transcript (Craig ETCHESON), E3/55, 21 May 2009, p. 51, ERN (En) 00330384; T. 14 December 2012 (SUON Kanil), pp. 105-106; T. 13 December 2012 (PHAN Van), pp. 2-3.
[854] T. 14 December 2012 (SUON Kanil), p. 95; T. 4 September 2012 (NORNG Sophang), p. 16; T. 19 June 2012 (YUN Kim), pp. 28-29;T. 28 March 2012 (KAING Guek Eav), pp. 18-21.
[855] *See* Section 5: Administrative Structures, paras 202-203.
[856] T. 12 December 2012 (PHAN Van), pp. 20-22 (describing meetings between IENG Thirith and NUON Chea); T. 25 September 2012 (NOEM Sem), pp. 66-67 (stating that POL Pot and NUON Chea and KHIEU Samphan dined together at K-3); T. 8 January 2013 (SA Vi), p. 85 (indicating that KHIEU Samphan visited K-1 more frequently than other senior leaders); T. 23 April 2012 (SALOTH Ban), p. 72 (confirming that IENG Sary and NUON Chea and KHIEU Samphan met with each other at K-1); T. 28 March 2012 (KAING Guek Eav), pp. 62-64 (suggesting that the senior leaders, including SON Sen, VORN Vet and NUON Chea, met with each other and ate together). *See* Section 7: Roles and

272. CPK leaders also corresponded by letter; for example, Witness OEUN Tan (who worked at K-1 from 1975 to 1979[857]) remembered delivering letters back and forth between POL Pot and NUON Chea, and between POL Pot and SON Sen.[858] As previously noted, offices of the Party Centre occasionally exchanged orders, requests and information by telephone too.[859]

273. Telegrams received by the Party Centre from the lower echelons were usually taken to K-1, where they would be decoded (if necessary), sorted and redistributed as appropriate.[860] Witness OEUN Tan told the Chamber that all of the telegrams he delivered to POL Pot were subsequently delivered to NUON Chea.[861] Having reviewed the telegrams on the Case File, and having heard evidence to the effect that there were frequent meetings and consultations between NUON Chea and POL Pot and that they worked together closely, the Chamber is satisfied that most of the telegrams sent to POL Pot during the DK period were also seen by NUON Chea.[862]

6.2.2. *Between the Party Centre and the Zones or Autonomous Sectors*

274. Zones and Autonomous Sectors reported directly to the Party Centre.[863] At a meeting attended by several Zone and Autonomous Sector representatives in March 1976, the Standing Committee issued the following instructions concerning the applicable procedure for writing reports:

> It is proposed that a report on the status of dykes be sent to the Standing Committee every week. The report should either present a general description of the situation or, where necessary, provide details on each aspect. It is proposed that a brief report be sent by

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Functions – Nuon Chea, para. 317; Section 8: Roles and Functions – Khieu Samphan, paras 373, 386, 408.

[857] T. 13 June 2012 (OEUN Tan), p. 38.

[858] T. 13 June 2012 (OEUN Tan), p. 98.

[859] *See* Section 6: Communication Structure, para. 252.

[860] OEUN Tan Interview Record, E3/33, 9 October 2008, p. 9, ERN (En) 00235133; T. 29 August 2012 (NORNG Sophang), pp. 72-73; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758. *See also,* T. 29 August 2012 (NORNG Sophang), pp. 69-70; T. 3 September 2012 (NORNG Sophang), p. 31 (indicating that "Pon" and "Thé", who worked at K-1, had the authority to decide to whom incoming telegrams would be copied).

[861] T. 13 June 2012 (OEUN Tan), p. 64.

[862] *See also* Section 7: Roles and Functions – Nuon Chea, paras 317, 328.

[863] T. 11 June 2012 (SAO Sarun), p. 13; T. 19 June 2012 (YUN Kim), pp. 28-29; T. 4 September 2012 (NORNG Sophang), pp. 16-17.

> telegram to keep the Standing Committee informed of the situation and enable it to issue timely instructions.[864]

275. This followed advice handed down in a 1972 edition of *Revolutionary Flag*, in which the Party – noting that "we are poor at reporting" – set out guidance on the preparation of reports in order to enable "the senior levels to take hold of a situation clearly and to provide practical instructions".[865] This guidance recommended that precise and regular reports cover the topics of "the enemy", "people", "all working activities" and "resolutions and directions".[866]

276. Zones and Autonomous Sectors accordingly compiled reports for the Party Centre based on the information passed up to them from the lower echelons.[867] The reports were sent frequently, sometimes daily, although some reports summarised events over longer periods of time.[868] Reports were sent by telegraph and by letter.[869] Representatives of the Zones and Autonomous Sectors also occasionally reported to the Standing Committee in person.[870]

277. Each Zone had specific prearranged time slots during which it could transmit telegrams to the Party Centre; however, messages could also be sent outside the designated times if the circumstances justified it.[871]

278. A number of reports to the Party Centre were put before the Chamber. They showed that the Zones and Autonomous Sectors reported on issues such as production, agriculture and the rice harvest;[872] activities of purported internal and

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[864] Standing Committee Minutes, E3/232, 8 March 1976, p. 7, ERN (En) 00182634 [unofficial translation from the Khmer original].

[865] *Revolutionary Flag*, E3/783, September-October 1972, pp. 25, 28, ERN(En) 00720226, 00720229.

[866] *Revolutionary Flag*, E3/783, September-October 1972, p. 28, ERN (En) 00720229.

[867] KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088; T. 14 December 2012 (SUON Kanil), p. 101; T. 4 September 2012 (NORNG Sophang), p. 16.

[868] T. 7 June 2012 (SAO Sarun), p. 19. *See e.g.* Zone 560 Report, E3/179 (also available at E3/180), 29 May 1977 (covering the period from 4 May 1977 to 29 May 1977); Zone 560 Report, E3/1179, 8 June 1977 (covering the period from 24 May 1977 to 7 June 1977); Zone 401 Report, E3/1094, 4 August 1978 (described as a "monthly report").

[869] T. 11 December 2012 (PHAN Van), p. 61; T. 6 May 2013 (Philip SHORT), p. 67; T., 7 June 2012 (SAO Sarun), pp. 15-17, 19; OEUN Tan Interview Record, E3/33, 9 October 2008, p. 9, ERN (En) 00235133; YENG Lin Interview Record, E3/59, 17 January 2008, p. 3, ERN (En) 00226103.

[870] *See e.g.* Standing Committee Minutes, E3/232, 8 March 1976.

[871] T. 29 August 2012 (NORNG Sophang), p. 79; T. 14 December 2012 (SUON Kanil), pp. 90, 92.

[872] *See e.g.* DK Telegram, E3/1077, 10 April 1978; Southwest Zone Report, E3/853, 3 June 1977; Zone 560 Report, E3/863, 16-17 May 1978; Zone 560 Report (also available at E3/180), E3/179, 29

external enemies;[873] and living conditions generally, including health problems and food shortages.[874] Messages from the Zones also contained requests for instructions, guidance on the same topics or material assistance from the Party Centre.[875]

279. Telegrams from the Zones and Autonomous Sectors to the Party Centre were generally addressed to 'Committee 870' or '*Angkar*', but also occasionally to '*Angkar* 870' or to POL Pot himself.[876] As the Chamber has already observed, CPK cadres did not always understand the terms '*Angkar*' or '870' clearly.[877] Lists of recipients on many of the telegrams indicate that copies were sent to various CPK leaders, including NUON Chea.[878] Telegrams marked as having been copied to the "office" went to Office 870.[879]

280. The Party Centre sent out general directives to the lower echelons by telegraph dealing with "all aspects of the country" and the "overall situation".[880] KHIEU Samphan sent regular telegrams regarding the distribution of materials at the base or local level.[881] As Secretary of Autonomous Sector 105, Witness SAO Sarun told the Chamber that he received instructions from the Party Centre by telegram on subjects

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May 1977; DK Telegram, E3/1091, 23 August 1977. *See also,* SAO Sarun Interview Record, E3/383, 29 June 2009, p. 5 ERN (En) 00350264.

[873] *See e.g.* Zone 401 Report, E3/1092, undated; Zone 401 Report, E3/1094, 4 August 1978; DK Telegram, E3/1144, 5 September 1977; Zone 560 Report, E3/1179, 8 June 1977.

[874] *See e.g.* DK Telegram, E3/948, 10 May 1978; DK Telegram, E3/511, 2 April 1976; Zone 560 Report, E3/179, 29 May 1977; Zone 401 Report, E3/1092, undated; DK Telegram, E3/1144, 5 September 1977.

[875] *See e.g.* DK Telegram, E3/511, 2 April 1976; DK Telegram, E3/519, 29 March 1978; DK Telegram, E3/1036, undated; DK Telegram, E3/1196, 26 November 1976.

[876] T. 29 August 2012 (NORNG Sophang), p. 48. *See* Section 6: Communication Structure, fns. 872-875.

[877] *See e.g.* T., 7 June 2012 (SAO Sarun), p. 21 ("People call it M-870, but I did not know what this office was all about"). *See* Section 5: Administrative Structures, paras 207-208, 221

[878] *See e.g.* DK Telegram, E3/511, 2 April 1976 (copied to SON Sen and NUON Chea); DK Telegram, E3/519, 29 March 1978 (copied to NUON Chea); DK Telegram, E3/948, 10 May 1978 (copied to "Uncle", *i.e.* POL Pot – *see* T. 5 September 2012 (NORNG Sophang), p. 57 – NUON Chea, IENG Sary and VORN Vet); DK Telegram, E3/1077, 10 April 1978 (copied to "Grand Uncle", *i.e.* POL Pot – *see* SENG Mon Interview Record, E3/71, 14 February 2009, p. 7, ERN (En) 00288625 – NUON Chea, IENG Sary and VORN Vet); DK Telegram, E3/1144, 5 September 1977 (copied to POL Pot, NUON Chea, IENG Sary, VORN Vet and SON Sen); DK Telegram, E3/1196, 26 November 1976 (copied to NUON Chea and SON Sen). *See* Section 7: Roles and Functions – Nuon Chea, para. 325.

[879] T. 3 September 2012 (NORNG Sophang), p. 39; KAING Guek Eav Written Answers, E3/15, 21 October 2008, p. 6, ERN (En) 00251376.

[880] T. 29 August 2012 (NORNG Sophang), pp. 49-50. *See e.g.* DK Telegram, E3/254, 20 March 1978 (directing the recipient to monitor enemy activities in Muk Kampoul and "take any measure based on the reality by communicating with Muk Kampoul"). *See also,* T. 14 December 2012 (SUON Kanil), p. 88; PON Ol Interview Record, E3/373, 7 May 2009, p. 5, ERN (En) 00336528.

[881] T. 29 August 2012 (NORNG Sophang), pp. 50.

such as farming.[882] Officials at the Zone or Autonomous Sector level also received letters from Office 870 and from individual CPK leaders, including NUON Chea and KHIEU Samphan.[883]

6.2.3. *Between the Zones and the Sectors*

281. Just as there were specific times for the transmission of telegrams by Zones to the Party Centre, there were separate schedules for communication between Zones and Sectors.[884] These were designed in such a way as to ensure that communications between the various echelons did not overlap.[885]

282. Witness SUON Kanil, who worked in the telegram decoding unit of the Central Zone, testified that the Central Zone authorities received telegrams from the Sectors approximately once a day, and more often after 1978.[886]

6.2.4. *Between the Sectors and the Districts*

283. Reports emanating from the Districts were passed upwards through the Sectors (and, if appropriate, Zones) to the Party Centre.[887]

284. Districts reported to Sectors on matters such as the construction of dams and canals, agriculture, health and "good or bad elements".[888]As the secretary of Kampong Siem District, Witness PRAK Yut prepared monthly written reports for the Sector committee on the implementation of plans and the situation within the District.[889] Similarly, Witness SAO Sarun recalled sending reports on rice farming to the Sector approximately once a week in his capacity as Pech Chenda District

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[882] T. 7 June 2012 (SAO Sarun), pp. 20-21.
[883] T. 11 December 2012 (PHAN Van), pp. 97-98 (referring to communications from '870' and NUON Chea); THA Sot Interview Record, E3/464, 19 January 2008, pp. 7-8, ERN (En) 00226112-00226113 (describing the delivery of letters from POL Pot, IENG Sary and NUON Chea and KHIEU Samphan to the Zones).
[884] T. 14 December 2012 (SUON Kanil), p. 94.
[885] T. 14 December 2012 (SUON Kanil), p. 94.
[886] T. 14 December 2012 (SUON Kanil), pp. 5, 95.
[887] KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088
[888] KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088.
[889] T. 26 January 2012 (PRAK Yut), p. 70.

secretary.[890] District offices did not typically have telegraph capabilities, so written reports were sent to the Sectors by messenger.[891]

285. District and Sector officials also met in person regularly. According to Witness SAO Sarun, District secretaries reported on the situations in their Districts at meetings of the relevant Sector committee.[892]

286. Just as instructions handed down by the Party Centre to the Zones were relayed by the Zones to the Sectors, the Sector authorities in turn passed these orders on to the Districts.[893]

6.2.5. ***Between the Districts and the sub-district entities***

287. District officials often met in person with the heads of communes or co-operatives to exchange information or communicate orders verbally.[894] Witness YUN Kim, a commune chief during the DK period, told the Chamber that commune leaders met with district authorities weekly to report on production, health, culture and "the enemy situation" in the communes.[895] If there was a pressing need to communicate between these meetings, the District sent messengers to the communes.[896]

288. Surviving documentary evidence indicates that sub-district entities also submitted written requests and reports to the Districts from time to time on issues such as arrests, suspicious behaviour and the situation in the communes and co-operatives.[897] Witness PRAK Yut testified that the district committee on which she sat received monthly written reports from the communes on the subjects of agriculture, construction projects, achievement of targets, the "wrongdoings of some people", food shortages and the number of sick people.[898] As secretary of Pech Chenda

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[890] T. 6 June 2012 (SAO Sarun), p. 10. *See also*, T., 20 June 2012 (YUN Kim), p. 17.
[891] T. 26 January 2012 (PRAK Yut), pp. 53, 70; T. 6 June 2012 (SAO Sarun), p. 10; T., 20 June 2012 (YUN Kim), p. 17.
[892] T. 6 June 2012 (SAO Sarun), pp. 11-12. *See also*, T. 25 January 2012 (PRAK Yut), p. 85.
[893] T. 14 December 2012 (SUON Kanil), pp. 94-95; T. 3 May 2013 (LIM Sat), p. 50.
[894] T. 6 December 2011 (KLAN Fit), p. 74; T. 3 May 2013 (LIM Sat), p. 50; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 23, ERN (En) 00142848.
[895] T. 19 June 2012 (YUN Kim), pp. 41, 74-75; T. 20 June 2012 (YUN Kim), p. 8.
[896] T. 20 June 2012 (YUN Kim), p. 9.
[897] *See e.g.* Commune Reports, E3/2044, January-April 1977; Trapeang Thom Khang Cheung Sub-district Report, E3/4087, 9 October 1977; Ta Phem Sub-district Report, E3/4084, May 1977.
[898] T. 26 January 2012 (PRAK Yut), pp. 56, 59, 61-62.

District, Witness SAO Sarun also recalled receiving monthly reports from the communes on rice production, livestock and the management of the locality generally.[899]

6.2.6. *Communications with foreign countries*

289. The DK state institutions sent telegrams to several foreign countries bearing greetings, expressions of solidarity and messages of congratulation on significant occasions.[900] Friendly socialist states sent similar messages in return.[901]

290. In 1976, Amnesty International sent two letters, the first in February to then-Prime Minister PENN Nouth and the second in May to the recently-appointed President of the State Presidium KHIEU Samphan, expressing concern at reports of summary executions and maltreatment of civilians and requesting that inquiries be made.[902] As no response was forthcoming, Amnesty International – joined by the UN Commission on Human Rights – renewed its appeal in 1978.[903]

291. The DK government maintained communications with other states by sending and receiving official delegations to and from foreign countries, including Laos, China, North Korea and Japan.[904] In particular, the DK regime sent and received delegations to and from Vietnam, primarily for the purpose of discussing border

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[899] T. 6 June 2012 (SAO Sarun), pp. 12-13.

[900] *See e.g. Khieu Samphan Greetings on Bulgarian National Day* (in FBIS Collection), E3/280, 8 September 1976, ERN (En) 00168092-00168093; *Khieu Samphan Messages Mozambique on Rhodesian 'Aggression'* (in FBIS Collection), E3/288, 2 June 1977, ERN (En) 00168159; *Khieu Samphan Congratulates Tito on Yugoslav National Day* (in FBIS Collection), E3/77, 29 November 1978, ERN (En) 00170160.

[901] *See e.g.* French Embassy Letter, E3/487, 20 April 1977 (reporting on messages to the DK leaders from the Lao People's Democratic Republic sent on the occasion of the second anniversary of the founding of Democratic Kampuchea).

[902] Amnesty International Report 1975-1976: *Democratic Kampuchea*, E3/4520, undated.

[903] *Cambodians: An Endangered Species* (Los Angeles Times), E3/4492, 7 May 1978; Amnesty International News Release, E3/3311, 8 May 1977; Amnesty International News Release, E3/3316, 30 March 1978.

[904] *See e.g. Cambodian Deputy Premier in Japan* (in SWB Collection), E3/666, 14 June 1978, p. 1, ERN (En) S 00010668; *Chinese Ambassador to Cambodia Gives Reception for Nuon Chea* (in SWB Collection), E3/1280, 22 September 1978, p. 7, ERN (En) S 00013064; DK Government Film, E3/479R, undated, ERN V 00422570; *President of Laos in Cambodia* (in SWB Collection), E3/1406, 22 December 1977, pp. 1-2, ERN (En) S 00008360-S 00008361; *At the End of his Mission in Democratic Kampuchea…* (DK News Bulletin), E3/1420, 16 September 1978, pp. 4-5, ERN (En) S 00702660-S 00702661.

disputes.[905] Journalists from Yugoslavia, Turkey, North Korea, Vietnam and the United States of America also visited Cambodia during the DK period, where they interviewed state officials and visited the countryside under the escort of state or Party officials.[906]

292. The DK Ministry of Commerce communicated with foreign countries for the purposes of international trade.[907] Overseas trade delegations also visited Cambodia from time to time during the DK era.[908]

293. Between 1976 and 1979, IENG Sary attended several meetings of the UN General Assembly in New York, where he put forward the DK regime's position on the situation in Cambodia and on certain international issues.[909] As the Vietnamese approached Phnom Penh in 1979, IENG Sary sent a telegram of complaint to the UN Security Council.[910]

6.3. Military Communications

294. Lines of communication within the RAK mirrored the vertical reporting structure on the civilian side of the CPK: that is, orders were transmitted downwards from the General Staff through the divisions to the lower units; information was

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[905] *See e.g. SRV Foreign Ministry Press Conference* (in SWB Collection), E3/2300, 7 April 1978, pp. 1-20, ERN (En) S 00010498-S 00010517.

[906] *See e.g.* DK Telegram, E3/1113, 15 March 1978; DK Telegrams, E3/1112, March 1978; *Comrade Secretary Pol Pot Hosts…*(DK News Bulletin), E3/1420, 16 September 1978, pp. 5-6, ERN (En) S 00702661-S 00702662; *IENG Sary receives DRPK* [sic] *Press Delegation 30 Jan* (in FBIS Collection), E3/284, 1 February 1977, ERN (En) 00168400; *Delegation from the Marxist-Leninist French Communist Party…*(DK News Bulletin), E3/1420, 16 September 1978, pp. 6-8, ERN (En) S 00702662-S 00702664; *Friendly Visit to Democratic Kampuchea…* (DK News Bulletin), E3/268, 31 July 1976, pp. 11-12, ERN (En) 00519788-00519791; *Activities of the Delegation of Journalists from the Socialist Republic of Vietnam…* (DK News Bulletin), E3/268, 31 July 1976, pp. 12-14, ERN (En) 00519789-00519791; Book by E. BECKER: *When The War Was Over*, E3/20, 1986, pp. 323, 399-431 ERN (En) 00238036, 00238113-00238144.

[907] *See e.g.* DK Foreign Trade Committee Letter, E3/3418, 15 July 1978; Commerce Committee Report, E3/2516, 27 November 1978.

[908] *See e.g.* DK Government Minutes, E3/827, 2 December 1978; SAKIM Lmut Interview Record, E3/439, 18 December 2009, pp. 5-7, ERN (En) 00425911-00425913; *Romanian Trade Delegation in Cambodia* (in SWB Collection), E3/1517, 3 April 1978 (reports visit of Romanian delegation in March 1978).

[909] *See e.g.* T. 8 August 2012 (SUONG Sikoeun), p. 23; IENG Sary Speech at UN General Assembly, 10th Session, E3/547, 11 October 1977; UN General Assembly Official Records, E3/1586, 9 June 1978; UN General Assembly Official Records, E3/618, 9 October 1979; *Ieng Sary Returns 28 Oct from UN, Philippines, Indonesia* (in FBIS Collection), E3/721, 29 October 1978, ERN (En) 00170323; IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976.

[910] DK Telegram Addressed to the UN Secretary-General, E3/556, 3 January 1979.

reported upwards through the chain of command; and individual commanders at each level usually made contact only with the levels immediately above and below them.[911]

6.3.1. *Communication within the Party Centre*

295. SON Sen, the chief of the General Staff,[912] attended meetings of the Standing Committee and kept the Standing Committee informed of military affairs and matters of national defence.[913] SON Sen also forwarded written messages and reports received from military commanders to other CPK leaders, including NUON Chea, with handwritten annotations and requests for instructions.[914]

6.3.2. *Communication between the General Staff and the Divisions*

296. Military Divisions under the command of the Party Centre reported to the General Staff as often as two or three times a day.[915] The Divisions and the General Staff communicated by radio or, if confidentiality was required, by telegraph or telephone.[916]

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[911] T. 4 October 2012 (MEAS Voeun), pp. 22-23, 37; T. 9 January 2013 (UNG Ren), p. 39; T. 10 January 2013 (UNG Ren), pp. 7, 26, 44-45; T. 23 April 2013 (CHHOUK Rin), pp. 43-44, 57-58; CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 8, ERN (En) 00513318.

[912] Standing Committee Minutes, E3/183, 9 October 1975, p. 1, ERN (En) 00183393; T. 11 January 2012 (NUON Chea), p. 37; T. 29 March 2012 (KAING Guek Eav), pp. 17, 22; T. 11 July 2013 (Stephen HEDER), p. 81.

[913] *See e.g.* Standing Committee Minutes, E3/229, 22 February 1976; Standing Committee Minutes, E3/217, 11 March 1976; Standing Committee Minutes, E3/222, 15 May 1976.

[914] *See e.g.* DK Military Report, E3/1135, 19 October 1976; DK Military Report, E3/1082, 12 August 1977 (both referring to Division 164 and identifying the sender as "Mut", *i.e.* MEAS Muth, commander of Division 164: *see* SENG Soeun Interview Record, E3/409, 11 November 2009, p. 5, ERN (En) 00412180; MEAS Muth Interview by Christine CHAUMEAU and BOU Saroeun, E3/346, undated; *See also*, DK Telegram, E3/1199, 6 April 1977 (referring to Division 920 and identifying the sender as "San", i.e., Ta San, commander of Division 920: *see* T. 6 June 2012 (SAO Sarun), p. 82; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213). *See also*, Section 7: Roles and Functions – Nuon Chea, para. 337.

[915] LONH Dos Interview Record, E3/70, 20 November 2009, p. 5, ERN (En) 00407789; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071.

[916] T. 4 October 2012 (MEAS Voeun), p. 23; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071; LONH Dos Interview Record, E3/70, 20 November 2009, p. 5, ERN (En) 00407789; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 5, ERN (En) 00414060; T. 9 January 2013 (UNG Ren), pp. 60, 65, 75. *See also*, DK Military Report, E3/997, 20 March 1978 (referring to a "confidential telephone communication").

297. The commanders and deputy commanders of Divisions and Independent Regiments also met SON Sen in person from time to time.[917] At these meetings, the military officers updated SON Sen on the situation within their units, and SON Sen issued instructions and political guidance.[918]At least one large political study session conducted by the General Staff was attended by soldiers at the regiment, battalion, company and platoon level.[919] Military personnel also occasionally participated in large meetings or rallies in Phnom Penh, some of which were attended by CPK/DK senior leaders, including NUON Chea and KHIEU Samphan.[920]

298. Written reports put before the Trial Chamber demonstrate that the Divisions regularly sent information to the General Staff on enemy activities; agriculture and the growing of rice; internal enemies and subversive activities within the units; and the progress of construction projects.[921] Divisions also contacted the General Staff to seek orders.[922]

6.3.3. ***Communication within the Divisions***

299. Having received orders from the General Staff, Division commanders would relay these instructions to the lower units, often by meeting their officers or leaders in

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[917] T. 4 October 2012 (MEAS Voeun), p. 23; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071; T. 9 January 2013 (UNG Ren), pp. 60-61, 64-65.

[918] *See e.g.* DK Military Meeting Minutes, E3/795, 2 August 1976; DK Military Meeting Minutes, E3/796, 12 August 1976; Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976; DK Military Meeting Minutes, E3/807, 1 March 1977.

[919] RAK General Staff Document: *General Staff Study Session, Second Session*, E3/847, 25 November 1976.

[920] T. 11 January 2013 (CHHAOM Se), pp. 56, 68-69; T. 8 April 2013 (CHHAOM Se), pp. 53-54, 84-86 (recalling a ceremony at the Olympic Stadium in Phnom Penh in 1975 attended by POL Pot, SON Sen, IENG Sary and NUON Chea and KHIEU Samphan, amongst others); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 6, ERN (En) 00223338 (describing a ceremony in 1975at the Olympic Stadium attended by NUON Chea and KHIEU Samphan); CHHOUK Rin Interview Record, E3/362, 29 July 2008, pp. 4-5, ERN (En) 00268896-97 (describing a meeting in 1977 in Phnom Penh attended by NUON Chea); KOY Mon Interview Record, E3/369, 29 May 2008, p. 3, ERN (En) 00272715 (describing a meeting at the Olympic Stadium in 1975 attended by POL Pot, IENG Sary and NUON Chea and KHIEU Samphan, amongst others).

[921] *See e.g.* DK Military Report, E3/1085, 4 November 1977; DK Military Report, E3/1202, undated; DK Military Report, E3/1162, 26 May 1976; DK Military Report, E3/997, 20 March 1978; DK Telegram, E3/1750, 13 August 1976; DK Military Report, E3/1213, 1 May 1976; DK Military Report, E3/1060, 25 March 1977; DK Military Report, E3/1160, 11 March 1976.

[922] *See e.g.* DK Telegram, E3/1190, 11 June 1976; DK Military Report, E3/1168, 30 March 1977.

person.[923] In turn, these orders would be passed down through the regiments and battalions.[924]

300. The commanders and deputy commanders of Divisions and subordinate levels communicated with each other by radio, by telegraph, by messenger and in person.[925]

301. Company commanders reported to their superiors in writing and by radio.[926] Battalion commanders submitted written reports to regiment commanders, which were delivered by messenger.[927] The regiments in turn sent written reports to the Division by telegraph and by messenger on at least a monthly basis.[928]

6.3.4. ***Communication between Divisions***

302. Some degree of lateral communication between Divisions took place, at least at the regimental level, for the purpose of co-ordinating tasks.[929]

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[923] T. 4 October 2012 (MEAS Voeun), pp. 11-12; T. 24 April 2013 (CHUON Thi), p. 35.

[924] T. 24 April 2013 (CHUON Thi), pp. 35-36; T. 20 May 2013 (IENG Phan), p. 12; T. 4 October 2012 (MEAS Voeun), pp. 11-12, 22, 24-25, 27; T. 10 January 2013 (UNG Ren), p. 4.

[925] T. 4 October 2012 (MEAS Voeun), pp. 11-12, 22, 24-25, 27; T. 10 January 2013 (UNG Ren), p. 4; T. 24 April 2013 (CHUON Thi), pp. 34, 55; T. 9 January 2013 (UNG Ren), pp. 39-40; T. 20 May 2013 (IENG Phan), pp. 12-13, 30-31; LOEK Sao Interview Record, E3/418, 12 November 2009, pp. 2-3, ERN (En) 00403588-00403589. *See e.g.* DK Telegram, E3/1222, 24 September 1976; DK Telegram, E3/1223, 27 September 1976; DK Telegram, E3/1225, 6 October 1976 (identifying the sender as "Dim", *i.e.* Kun Dim, Deputy Commander of a battalion within Division 164 – *see* RAK General Staff Document: *General Staff Study Session, Second Session*, E3/847, 23 November 1976, p. 11, ERN (En) 00195332; Second General Staff Study Course, Division 164, Group 2, E3/1143, 23 November 1976, p. 3, ERN (En) 00535795 – and the recipient as "Mut", *i.e.* MEAS Muth, Commander of Division 164 – *see* Section 6: Communication Structure, fn. 914.

[926] SUOS Siyat Interview Record, E3/5145, 17 January 2008, p. 4, ERN (En) 00204707.

[927] T. 24 April 2013 (CHUON Thi), pp. 34, 55.

[928] T. 9 January 2013 (UNG Ren), p. 59; KHUN Kim Interview Record, E3/422, 30 November 2009, p. 5, ERN (En) 00414066.

[929] T. 4 October 2012 (MEAS Voeun), pp. 24-25; T. 8 October 2012 (MEAS Voeun), pp. 43, 50.

7. ROLES AND FUNCTIONS – NUON CHEA

303. According to the Closing Order, before and during the DK period, NUON Chea was a prominent member of the Party Centre, his responsibilities including propaganda, training and discipline of cadres as well as internal and external security-related matters.[930]

304. At the beginning of the substantive hearing, NUON Chea made an opening statement.[931] For a period thereafter, he agreed to answer questions from the Judges and the Parties, and made several statements relevant to his roles and functions with the CPK and during the DK period.[932] As further noted below, NUON Chea confirmed his long and close association with the Party, including his role as Deputy Secretary and his membership in its Central and Standing Committees. While denying any formal role in military policy, NUON Chea confirmed other roles and functions during the DK period, including his appointment as Chairman of the PRA and his responsibilities in connection with the training of cadres and with propaganda. NUON Chea later decided to exercise his right to remain silent and declined to respond to questions from the Judges and the Parties.[933] On the last day of the trial, NUON Chea made a final statement before the Chamber.[934]

7.1. Background Information and Pre-DK Period

305. NUON Chea, whose birth name is LAO Kim Lorn, was born on 7 July 1926, in Voat Kor Village, Sangkae District, Battambang Province.[935] NUON Chea studied initially in Battambang, continuing his secondary education in Thailand in 1941, and then at the Thammasat University in Bangkok where he started to study law under the

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[930] The Roles and Functions of NUON Chea are discussed in paras 869-894 of the Closing Order. In addition, paras 895-992 are relevant to NUON Chea's participation in the Joint Criminal Enterprise.
[931] T. 22 November 2011 (NUON Chea), pp. 74-112.
[932] T. 5-6, 13-15 December 2011; T. 10-12, 30-31 January 2012; T. 8-9 February 2012, T. 19 March 2012. *See also*, T. 18 April 2012; T. 6 June 2013; T. 9 July 2013. *See also*, Notes Used by Accused NUON Chea during the Hearing of 5 December 2011, E148.
[933] T. 19 March 2012 (NUON Chea), pp. 23-24; T. 18 April 2012 (NUON Chea), pp. 5-7; T. 17 July 2013 (NUON Chea), pp. 67-68. NUON Chea responded to certain questions put to him by Civil Parties who appeared at trial. *See* Notice of Intent Pursuant to Internal Rule 90, E287, 27 May 2013; T. 29 May 2013; T. 30 May 2013; T. 4 June 2013. Section 2: Preliminary Issues, paras 27, 29.
[934] T. 31 October 2013, pp. 1-34.
[935] T. 5 December 2011 (NUON Chea), p. 37; T. 30 January 2012 (NUON Chea), pp. 41-42. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148814-15.

name of Runglert Laodi. During part of that period, he also worked in the Thai Ministry of Finance and in the Thai Ministry of Foreign Affairs.[936] While in Thailand, NUON Chea joined the Youth for Democracy movement of Thailand and participated in discussions about the situation in Cambodia. In 1950, he joined the Communist Party of Thailand, later returning to Cambodia to join the resistance movement.[937]

306. NUON Chea joined the then Indochina Communist Party,[938] giving as his reasons his concern at the treatment of Cambodian peasants by French colonial officials and rich Cambodian landowners.[939] From about 1950, NUON Chea's activism intensified as he engaged in propaganda and education activities, which included publishing newspapers and conducting training sessions for peasants in the rural areas.[940]

307. Around 1951-54, NUON Chea was sent by the Party to study and receive political training in Vietnam. After the Geneva Accords he returned to Cambodia, and claimed that Party members were being arrested, imprisoned or had left the movement, and that peasants' farming activities were being obstructed by the harsh policies of the government.[941] Before settling in Phnom Penh in 1955, NUON Chea moved among different locations in the countryside, such as in Boeng Lvea, along the

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[936] T. 5 December 2011 (NUON Chea), pp. 38-39, 43-44; T. 31 January 2012 (NUON Chea), pp. 5-6, 46; T. 30 January 2012 (NUON Chea), pp. 41-42. *See also*, Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498226.

[937] T. 5 December 2011 (NUON Chea), pp. 44-45; T. 31 January 2012 (NUON Chea), p. 8. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184664; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498226.

[938] T. 5 December 2011 (NUON Chea), pp. 44-46, 62-64; T. 31 January 2012 (NUON Chea), p. 10; T. 30 January 2012 (NUON Chea), pp. 39-40. *See also*, Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea, E3/16, ERN (En) 00498226. *See* Section 3: Historical Background, paras 81-84.

[939] T. 5 December 2011 (NUON Chea), p. 43; T. 13 December 2011 (NUON Chea), pp. 38-39; T. 31 January 2012 (NUON Chea), pp. 7-8. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817.

[940] T. 6 December 2011 (NUON Chea), p. 4; T. 31 January 2012 (NUON Chea), pp. 8-9. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184659-60.

[941] T. 5 December 2011 (NUON Chea), pp. 47-48, 71, 81; T. 6 December 2011 (NUON Chea), p. 6; T. 15 December 2011 (NUON Chea), pp. 36-38, 40-42. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184658.

Stung Chinit River, and in Samlaut, to disguise his active involvement in the revolutionary movement, and ensure his personal security.[942]

308. In Phnom Penh, NUON Chea continued his underground work for the revolutionary movement as a member of the Party city committee,[943] while working variously as a teacher, a vendor, or a clerk for an import-export company. After POL Pot returned from France in 1955-56, NUON Chea was introduced to him. POL Pot and NUON Chea who were both members of the Khmer People's Revolutionary Party, initially worked together as assistants to TOU Samuth.[944] Later, in 1960, NUON Chea met IENG Sary at the First Party Congress, during which TOU Samuth and NUON Chea were respectively nominated Secretary and Deputy Secretary and the Party was renamed the Workers' Party of Kampuchea.[945]

309. In 1963, IENG Sary and POL Pot, both listed as "leftists", were summoned together with other individuals by NORODOM Sihanouk under the pretext of forming a new government. Fearing arrest they joined the underground near the Vietnamese border.[946] According to NUON Chea, he met with KHIEU Samphan for the first time near the Aoral Mountain, after Khieu Samphan went to the *maquis,* but he does not remember when.[947] From the early 1960s Nuon Chea's political affiliation remained secret.[948] From 1963, NUON Chea travelled to the countryside to meet other leaders of the movement, including POL Pot, IENG Sary and SON Sen. He also met VORN

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[942] T. 6 December 2011 (NUON Chea), pp. 5-7; T. 31 January 2012 (NUON Chea), pp. 10-11.

[943] Notwithstanding NUON Chea's claim that he was not a member of this committee, it was clear that he had a role to play, even if it is accepted that he was not a founding member. *See* NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184658 (claiming POL Pot, MEI Mann, Khmao (sic), and CHAN Saman set up the committee before NUON Chea joined); T. 12 January 2012 (NUON Chea), pp. 28-29 (recalling VORN Vet was the chairman of the Phnom Penh city committee but not recalling any other members).

[944] T. 15 December 2011 (NUON Chea), pp. 42-43.

[945] T. 22 November 2011 (NUON Chea), p. 82; T. 15 December 2011 (NUON Chea), p. 44. *See* Section 3: Historical Background, para. 87.

[946] T. 20 July 2012 (Expert David CHANDLER), pp. 64-67; *See also,* Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498237. *See* Section 8: Roles and Functions – Khieu Samphan, para. 358.

[947] T. 30 January 2012 (NUON Chea), p. 46. *See also,* T. 12 January 2012 (NUON Chea), p. 35. KHIEU Samphan confirmed that he joined the Party at the Aoral Mountain around the period before the Coup d'état in 1970. *See* T. 8 February 2012 (KHIEU Samphan), p. 22. *See* Section 8: Roles and Functions – Khieu Samphan, para. 364.

[948] T. 20 July 2012 (Expert David CHANDLER), pp. 67-68.

Vet, KE Pauk, SAO Phim, KOY Thuon, ROS Nhim, as the revolution progressed.[949] On occasion, NUON Chea travelled clandestinely from Phnom Penh to the main Party offices, including Office 100, sited initially on the border area with Vietnam. From 1966-67, he travelled to the new Office 100 location in Ratanakiri and, from 1970, to Office S-71, located along the Stung Chinit River. Later, as the Khmer Rouge closed in on Phnom Penh he also visited B-5[950] and different provinces and zones controlled by the Khmer Rouge.[951]

310. In 1970, when NORODOM Sihanouk was overthrown, NUON Chea was visiting the East Zone and only managed to return to Phnom Penh after a few months. Once there, he continued to travel to meet POL Pot and IENG Sary to brief them on the situation in Phnom Penh and to receive instructions from POL Pot. [952] As the

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[949] T. 6 December 2011 (NUON Chea), pp. 7-11; T. 30 January 2012 (NUON Chea), p. 17; T. 6 May 2013 (Expert Philip SHORT), pp. 86-87. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184669-73 (also referring to a meeting NUON Chea held in 1968 with the Zone leaders, among which were Ta Mok, ROS Nhim and SAO Phim, where the participants were informed of a decision to initiate the armed and political struggle throughout the country in the East, the Northwest and the Southeast Zones); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498229-30; Khieu Samphan Interview Transcript, E3/4017, ERN (En) 00793527 (indicating that, in 1967, at the time of a rebellion in Samlaut NUON Chea travelled there and gave to ROS Nhim and KONG Sophal a letter containing instructions from the Central Committee to suspend the armed struggle).

[950] T. 6 December 2011 (NUON Chea), pp. 9-12 (discussing his travels to Office 100); T. 12 January 2012 (NUON Chea), pp. 19-21 (discussing his travels to Office 100), 36 (discussing his travels to the Stung Chinit area); T. 30 January 2012 (NUON Chea), p. 26 (discussing his travel to B-5); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 4, 39 (discussing NUON Chea's presence at Office S-71); T. 23 April 2012 (SALOTH Ban), p. 23 (indicating that NUON Chea was at the Party office along the Chinit River); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 12-15, 20-25, 33-34 (discussing NUON Chea's presence at B-5, including during a 1975 planning meeting for the final attack and evacuation of Phnom Penh).

[951] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 5-6, 18 (discussing NUON Chea's travel to Samlaut to meet with several Zone leaders); T. 20 June 2012 (YUN Kim), pp. 4-6, 79-80 (discussing a meeting held by NUON Chea in 1973 in Kratie Province). *See also*, T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 35. In 1973, NUON Chea accompanied NORODOM Sihanouk to a visit to the liberated areas. *See* T. 22 November 2011 (NUON Chea), pp. 92-94; T. 14 December 2011 (NUON Chea), pp. 22-25; T. 31 January 2012 (NUON Chea), pp. 35-37. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184660-61 (indicating that NUON Chea was in charge of all contacts with the rural areas since the early days of the Party), 00184668, 00184671.

[952] T. 22 November 2011 (NUON Chea), p. 89 ("In February [1970], I went to join the conference for the inauguration of the training sessions in the East Zone in order to inspect the situation on the possibility of conducting the coup d'état by the Lon Nol group and to put a mechanism in place to prevent such coup d'état"); T. 6 December 2011 (NUON Chea), pp. 9-11 ("I did not take refuge in the forest with Ieng Sary and Pol Pot. Once in a while, I went to meet them, probably once or -- once every one or two months, in order to report to them the situation in the city and also to receive instruction from Pol Pot as to how we are going to organize our party and the way forwards for our party. Sometime I went there once every month or twice -- once every two months, depending on the necessity of the situation of each circumstance at that time").

revolution developed further, however, NUON Chea finally left Phnom Penh and joined the other senior leaders of the Party at S-71.[953]

311. In the early years of his political activism in Cambodia, NUON Chea's main areas of responsibility within the Party included working on the formulation of the Party policies and strategic and tactical lines, together with POL Pot.[954] NUON Chea also continued to focus on propaganda, by travelling to and from the countryside to gather cadres and conduct training sessions with peasants and local leaders of the movement.[955] He was also instrumental in issuing the *Revolutionary Flag*.[956] At trial, NUON Chea made inconsistent statements concerning his participation in the publication of the *Revolutionary Flag*, denying any involvement in its initial establishment.[957] His denial is unconvincing, however, in view of his earlier involvement in the publication of several Party-related newspapers, and his later description of the publication of the *Revolutionary Flag*.[958] Finally, while NUON Chea worked on developing the Party policy of full independence from the

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[953] T. 30 January 2012 (NUON Chea), pp. 7-8. *See also*, T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 4; T. 11 December 2012 (PHAN Van), pp. 51-52 (indicating that NUON Chea was located at B-20, a sub-office of S-71).

[954] T. 22 November 2011 (NUON Chea), pp. 81-83; T. 6 December 2011 (NUON Chea), pp. 12-22; T. 30 January 2012 (NUON Chea), p. 52. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184661; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498230.

[955] T. 15 December 2011 (NUON Chea), pp. 52-54; T. 10 January 2012 (NUON Chea), p. 48; T. 26 July 2012 (ROCHOEM Tom), pp. 9-10, 32-44 (referring to a study session in 1971 at the North Zone office that included Sector and District cadres, chaired by POL Pot and NUON Chea. After this meeting, there was a meeting for the leaders of the Centre and the Zone leaders, in which NUON Chea also participated); T. 19 June 2012 (YUN Kim), pp. 10-11, 33-34, 37 (stating that, in 1973, NUON Chea convened a meeting in Phum Dar for the commune chiefs of Kratie Province. During the meeting NUON Chea provided instructions regarding the implementation and establishment of the cooperatives. The war against LON Nol regime was also briefly addressed by NUON Chea).

[956] Section 6: Communication Structure, paras 261-266.

[957] T. 6 December 2011 (NUON Chea), p. 5.

[958] T. 10 January 2012 (NUON Chea), pp. 11-12 ("But as I have said, during that time, we had nothing but to write on papers and to publish those writings and distribute them to everyone to read. The document was to be studied in order to build confidence amongst the nationalists and among the revolutionary. So we had, again, nothing to do but to come up with this *Revolutionary Flag*. So this is the rationale behind the *Revolutionary Flags*"); NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184663; T. 15 December 2011 (NUON Chea), pp. 73-74 ("The ones who made the *Revolutionary Flag* were the Standing Committee, especially the Secretary of the Party. And me, myself, were the one who wrote it"). *See also*, T. 6 December 2011 (NUON Chea), p. 4; 31 January 2012 (NUON Chea), pp. 8-9; NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184659-60.

Communist Party of Vietnam he also gradually assumed the role of liaison with that party, travelling to Vietnam on various occasions to meet with its leaders.[959]

312. Throughout the CPK period, NUON Chea was referred to by his surname as "Brother [*bang*] Nuon," "Uncle [*om*] Nuon" or "Grand Uncle [*om*] Nuon" as well as "Comrade Deputy Secretary", or, more generally, "Brother [*bang*]", "Respected Brother" or "Beloved Brother".[960] While he denied having used or being commonly referred to as "Brother No. 2",[961] several witnesses confirmed that this alias was also used to refer to NUON Chea.[962] These aliases are also referred to in several telegrams and reports relevant to the activities of the Party Centre[963] as well as in annotations made by cadres on S-21 confessions, including by Witness KAING Guek Eav, addressed or copied to NUON Chea.[964] Witness SUON Kanil, in particular, a radio

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[959] T. 5 December 2011 (NUON Chea), pp. 65-71; T. 13 December 2011 (NUON Chea), pp. 27-28; T. 14 December 2011 (NUON Chea), pp. 18-19, 35-36; T. 31 January 2012 (NUON Chea), pp. 22-24, 31-33; T. 9 February 2012 (NUON Chea), p.p. 44-50; T. 30 January 2012 (NUON Chea), pp. 52-54; T. 10 January 2012 (NUON Chea), p. 22; NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 001846661-62, 00184670; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498227. NUON Chea retained this role also during the DK period. See T. 9 July 2013 (NUON Chea), p. 26; T. 31 October 2013 (NUON Chea), pp. 6-7.

[960] T. 20 July 2012 (Expert David CHANDLER), p. 39 ("Brother Nuon"); T. 4 April 2012 (KAING Guek Eav), pp. 68-70 ("Brother Nuon" as well as "Respected Brother" and "Beloved Brother"), 79 ("Brother Nuon" as well as "Beloved Brother"); T. 11 December 2012 (PHAN Van), pp. 104-105 ("Brother" and "Bong"); T. 24 January 2012 (VANTHAN Dara Peu), p. 35 ("Brother Nuon"); T. 3 September 2012 (NORNG Sophang), pp. 32 ("Grand Uncle Nuon'), 34, and 46 ("Uncle Nuon"); T. 1 July 2013 (PECH Chim), pp. 72-74 ("Uncle Nuon"); T. 7 May 2013 (Expert Philip SHORT), p. 131 ("Comrade Deputy Secretary"). *See also*, NORNG Sophang Interview Record, E3/64, 27 January 2009, ERN (En) 00334057 ("Brother Nuon"), 00334058-61 ("Uncle Nuon"); SENG Mon Interview Record, E3/71, 14 February 2009, ERN (En) 00288625, 00288631, 00288634 ("Grand Uncle Nuon").

[961] T. 14 December 2011 (NUON Chea), pp. 13-14.

[962] T. 20 March 2012 (KAING Guek Eav), p. 21; T. 5 April 2012 (KAING Guek Eav), p. 115 (indicating that KOY Thuon referred to NUON Chea as Brother No. 2); T. 31 July 2012 (ROCHOEM Tom), pp. 37-38; T. 10 April 2013 (François PONCHAUD), p. 100; T. 1 July 2013 (PECH Chim), pp. 72-74. *See also*, T. 20 July 2012 (David CHANDLER), pp. 37, 39.

[963] DK Telegram, E3/893, 26 January 1976, ERN (En) 00182620-22 ("Brother Nuon"); DK Telegram, E3/908, 25 December 1977, ERN (En) 00183638-39 ("Uncle Nuon"); DK Telegram, E3/943, 25 April 1978, ERN (En) 00185204 ("Grand Uncle Nuon"); DK Report, E3/860, 15 April 1978, ERN (En) 00185201 ("Grand Uncle Nuon"); *Reception to Mark the 51st Anniversary of the Founding of the Chinese People's Revolutionary Liberation Army* (DK News Bulletin), 24 August 1978, E3/1417, ERN (En) 00712496, 00712498-99 ("Comrade Deputy Secretary"); *Speech by Comrade TENG Ying-Tchao, Member of the Central Committee of the Chinese Communist Party* (DK News Bulletin), E3/78, 6 February 1978, ERN (En) 00290287 ("Comrade Deputy Secretary").

[964] S-21 Confession - KUNG Kien *alias* Eung Vet, E3/1565, 26 May 1977, ERN (En) 00182773 ("Brother Nuon"); S-21 Confession - CHOUT Nhe, E3/1687, ERN (En) 00758196 ("Brother Nuon"); S-21 Confession - CHAP Mit, E3/1688, ERN (En) 00284069 ("Brother N. 2"). *See also*, T. 5 April 2012 (KAIN Guek Eav), pp. 7-9; T. 20 July 2012 (Expert David CHANDLER), pp. 34-38). NUON Chea was also referred to as "Brother Nuon" in annotations contained in several other S-21 confessions. *See e.g.* S-21 Confession - TAING An *alias* En, E3/1826, 31 October 1977, ERN (En)

operator from the Central Zone who dealt with telegrams relevant to the Party Centre, indicated that the reference to "Uncle Nuon" on telegrams addressed to Office 870 "of course" refers to NUON Chea.[965] During a Standing Committee Meeting held on 1 June 1976, POL Pot, identified as the Chairman of the Committee, referred to NUON Chea simply as "[comrade] NUON".[966]

7.2. Status and Role within the Party

313. NUON Chea testified that, since the First Party Congress in 1960, he was the Deputy Secretary of the Party.[967] NUON Chea retained this appointment during subsequent Party congresses as well as throughout the DK period.[968] After TOU Samuth's disappearance, POL Pot was appointed as Secretary of the Party in 1963. On several occasions, NUON Chea indicated that there were suspicions against him because of the earlier defection to the LON Nol regime of his uncle by marriage, SIEU Heng, who was a leader of the Khmer People's Revolutionary Party responsible for the party's rural membership. Therefore, NUON Chea supported the election of POL Pot as Secretary of the party while he would remain the Deputy Secretary.[969] However, he agreed with POL Pot that they would work together.[970]

00821424; S-21 Confession - DI Leng *alias* Pheap, E3/1839, 23 October 1977, ERN (En) 00835986; S-21 Confession - HEM Soth *alias* Sien, E3/1842, 21 October 1977, ERN (En) 00662317; S-21 Confession - LUN In, E3/3689, 21 October 1977, ERN (En) 00221784. *See also,* Section 7: Roles and Functions – Nuon Chea, fn. 1035.

[965] T. 14 December 2012 (SUON Kanil), pp. 100-101. *See also,* DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841.

[966] Standing Committee Minutes, 1 June 1976, E3/225, ERN (En) 00182719. Although the English translation of E3/225 omits "comrade", the Chamber has relied on the original Khmer document. NUON Chea is usually referred to in minutes of the Standing Committee as "Comrade Deputy Secretary" or as "Comrade Nuon". *See also,* Section 7: Roles and Functions – Nuon Chea, fn. 975.

[967] T. 22 November 2011 (NUON Chea), pp. 82 and 85-86; T. 5 December 2011 (NUON Chea), pp. 72-76; T. 14 December 2011 (NUON Chea), pp. 13-14. *See also,* T. 5 December 2011 (NUON Chea), pp. 69-70; T. 13 December 2011 (NUON Chea), pp. 24-25. *See also,* NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184662; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498232.

[968] T. 22 November 2011 (NUON Chea), p. 86; T. 5 December 2011 (NUON Chea), p. 75; T. 12 January 2012 (NUON Chea), p. 15; T. 9 July 2013 (NUON Chea), p. 25. *See also,* NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817; NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184667.

[969] T. 5 December 2011 (NUON Chea), pp. 74-76; T. 15 December 2011 (NUON Chea), pp. 48-50; T. 12 January 2012 (NUON Chea), pp. 10-12; *See also,* NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184666-67; T. 20 July 2012 (Expert David CHANDLER), pp. 63-64.

[970] Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage - NUON Chea Interview with THET Sambath, 09'40-10'14 ("So I said to Pol Pot that in the

314. Expert David CHANDLER, Witnesses SUONG Sikoeun and KAING Guek Eav, among others,[971] as well as KHIEU Samphan,[972] confirmed that NUON Chea held this position.

315. NUON Chea also confirmed having been a full rights member of both the CPK Central Committee and its Standing Committee.[973] His membership in these organs was confirmed by witnesses and experts who testified at trial.[974]

316. The fact that these appointments occurred is reflected in contemporary DK documents. Numerous CPK Standing Committee meeting minutes from the DK period indicate NUON Chea was present in his capacity as the Deputy Secretary of the Party.[975] From late 1977, NUON Chea was also officially identified as the Deputy Secretary of the CPK Central Committee in speeches he gave to foreign dignitaries and delegations and in DK media reports concerning international travel and meetings.[976]

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current situation I wasn't the right man to lead the Party… so I asked Pol Pot to be Secretary General. At that time we both agreed that whenever we had problems we would solve them together").

[971] T. 20 July 2012 (Expert David CHANDLER), p. 64; T. 16 August 2012 (SUONG Sikoeun), p. 34; T. 29 March 2012 (KAING Guek Eav), p. 22. *See also,* T. 6 May 2013 (Expert Philip SHORT), p. 64.

[972] KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 10-11 (Identifying NUON Chea as the Deputy Secretary of the Standing Committee of the CPK and with POL Pot as the most important persons within the Party); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498236.

[973] T. 10 January 2012 (NUON Chea), p. 22; T. 15 December 2011 (NUON Chea), p. 34-35; T. 12 January 2012 (NUON Chea), pp. 36-39. *See also,* NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184662, 00184667.

[974] T. 18 July 2012 (Expert David CHANDLER), pp. 32, 38; T. 27 March 2012 (KAING Guek Eav), pp. 72-73; T. 8 December 2011 (LONG Norin), p. 65; T. 26 April 2012 (SALOTH Ban), p. 2. *See also,* T. 30 July 2012 (ROCHOEM Tom), pp. 6-8; T. 6 May 2013 (Expert Philip SHORT), pp. 63-64; T. 1 October 2012 (KHIEV En), p. 91; T. 10 January 2013 (UNG Ren), p. 68.

[975] *See e.g.* Standing Committee Minutes, E3/227, 2 November 1975, ERN (En) 00183409; Standing Committee Minutes, E3/228, 9 January 1976, ERN (En) 00182614; Standing Committee Minutes, E3/229, 22 February 1976, ERN (En) 00182625; Standing Committee Minutes, E3/197, 11-13 March 1976, ERN (En) 00182638; Standing Committee Minutes, E3/217, 11 March 1976, ERN (En) 00182635; Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182651; Standing Committee Minutes, E3/220, 7 May 1976, ERN (En) 00182706; Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182693; Standing Committee Minutes, E3/222, 15 May 1976, ERN (En) 00182665; Standing Committee Minutes, E3/224, 30 May 1976, ERN (En) 00182667; Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182715.

[976] *Cambodian CP Officially Unveiled on Founding Anniversary* (in FBIS Collection), E3/2678, 6 October 1977, ERN (En) 00389470 (in which NUON Chea is officially recognised as the Central Committee Deputy Secretary); NUON Chea Speech at Peking Banquet in Honour of DK Delegation, E3/199, 3 September 1978, ERN (En) 00065911 (in which NUON Chea expresses his appreciation to the Communist Party of China, the people and the government of the People's Republic of China, for the aid, encouragements and supports which have reinforced Democratic Kampuchea's independence and sovereignty); Statement of the Communist Party of Kampuchea to the Communist Worker's Party

7.3. Residence, Working and Travel Locations During the DK Period

317. Upon returning to Phnom Penh after 17 April 1975, NUON Chea eventually took up his permanent residence at K-3, where he lived and worked with other CPK leaders, including POL Pot, IENG Sary, SON Sen, VORN Vet and KHIEU Samphan. From K-3, NUON Chea frequently travelled to K-1, POL Pot's residence located on the riverside, where important meetings of the Party Centre would also be held.[977] During the DK period, NUON Chea continued to travel to the countryside, visiting construction and agricultural projects, meeting with zone leaders and holding education and propaganda meetings.[978] On at least one occasion, NUON Chea travelled to China and North Korea on an official visit.[979]

7.4. Roles During the DK Period

318. In addition to his roles within the Party, NUON Chea occupied other official roles during the DK period. According to the Closing Order, NUON Chea was the

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of Denmark, E3/196, 30-31 July 1978, ERN (En) 00762391(speech made by NUON Chea to representatives of the Communist Worker's Party of Denmark who visited Kampuchea; elaborating on the history, ideology, organisation and the concrete activities after the liberation of the Communist Party of Kampuchea); *Speech by Comrade Nuon Chea* (DK News Bulletin), E3/78, 6 February 1978, ERN (En) 00290279 (speech made by NUON Chea at a banquet held in honor of a member of the Chinese Communist Party Central Committee and Vice Chairman of the Standing Committee of the People's National Assembly of the People's Republic of China; elaborating on the militant solidarity and great revolutionary friendship between China and Kampuchea); *Souphanouvong Arrival Reported*, *Pol Pot Meets Delegation* and *Khieu Samphan Receives Souphanouvong* (Kampuchea News), E3/1499, 19 December 1977, ERN (En) 00168361-64 (reporting on the arrival of a Lao party-government delegation in Kampuchea, welcomed, among others, by NUON Chea, and the subsequent meetings, which NUON Chea attended, between the Lao party-government delegation and representatives of the Communist Party of Kampuchea); *Nuon Chea Led Delegation Departs for PRC 2 September* (DK News Bulletin), E3/1526, 5 September 1978, ERN (En) 00170340 (reporting on visit by a Kampuchea People's Representative Assembly delegation led by NUON Chea to the People's Republic of China and the Democratic People's Republic of Korea).

[977] T. 17 June 2013 (LENG Chhoeung), pp. 13-14, 75-76; T. 25 September 2012 (NOEM Sem), pp. 63-64, 66-67; T. 13 June 2012 (OEUN Tan), pp. 38, 63-64; T. 3 May 2012 (PEAN Khean), p. 27; T. 12 December 2012 (PHAM Van), pp. 20-22; T. 18 April 2012 (SAUT Toeung), pp. 51-52. *See also*, T. 6 May 2013 (Expert Philip SHORT), p. 77; T. 8 May 2013 (Expert Philip SHORT), pp. 28-29. *See* Section 3: Historical Background, para. 87; Section 5: Administrative Structures, para. 213.

[978] T. 31 October 2013 (NUON Chea), p. 27; T. 29 May 2012 (NY Khan), pp. 3-5 (attending a Zone assembly in the West Zone in 1975 during which NUON Chea was present); T. 21 May 2013 (PRUM Som) pp. 32-36 (describing a meeting held in the new North Zone during which NUON Chea introduced KANG Chap as the new Zone Chairman); T. 8 January 2013 (SA Vi), pp. 34-35 (indicating that NUON Chea would travel to the countryside).

[979] T. 27 March 2012 (KAING Guek Eav), p. 50 (referring to NUON Chea's visit to China); T. 19 April 2012 (SAUT Toeung), pp. 84-87 (confirming that NUON Chea travelled to China and North Korea, in 1978). *See also*, Photograph of NUON Chea in Beijing, E3/3261, undated; Speech by Comrade Nuon Chea, Deputy Secretary of the Central Committee of the Communist Party of Kampuchea at the Banquet of the Assembly of People in Peking, E3/199, 3 September 1978.

Chairman of the Standing Committee of the PRA and, in September 1976, he was formally appointed Acting Prime Minister of DK, after POL Pot took a period of temporary leave allegedly due to some medical issues.[980]

7.4.1. *Chairman of the People's Representative Assembly*

319. NUON Chea confirmed his role as the Chairman of the PRA during the DK period.[981] He was appointed Chairman of the Standing Committee of the PRA, a title which he retained after the fall of DK,[982] following a decision of the CPK Central Committee on 30 March 1976.[983] Other contemporary DK documents, including various speeches he gave in that capacity to foreign dignitaries and delegations, identify NUON Chea as the Chairman the Assembly's Standing Committee.[984]

320. NUON Chea stated that this was one of the main roles he exercised during the DK period, leaving him in charge of ensuring that laws were adopted, although the conflict with Vietnam made this process difficult.[985] NUON Chea did not however assert that the PRA whose responsibility it was to debate legislation, was more than a façade indicating compliance with the Party Statute, as discussed in a Standing

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[980] Closing Order, paras 889-890 and para. 888, respectively.

[981] T. 11 January 2012 (NUON Chea), p. 37; T. 31 January 2012 (NUON Chea), p. 14; T. 9 July 2013 (NUON Chea), p. 26; *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817; T. 18 July 2012 (Expert David CHANDLER), p. 33; T. 27 August 2012 (Civil Party EM Oeun), p. 27; T. 23 August 2012 (KIM Vun), p. 22; T. 23 April 2013 (CHHOUK Rin), p. 50.

[982] DK Government Statement, E3/1435, 18 December 1979, ERN (En) 00017987 ("the Congress has unanimously decided to maintain Mr. Nuon Chea in his function as Chairman of the Standing Committee of the Assembly of the Kampuchean People's Representatives"); DK Press Release, E3/1449, 20 November 1981, ERN (En) 00020359.

[983] Central Committee Decision, E3/12, 30 March 1976, ERN (En) 00182813. *See also*, DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976; DK Press Release: *First Plenary Session of the First Legislature of the People's Representative Assembly of Kampuchea*, E3/262, 14 April 1976, ERN (En) 00528391.

[984] *See e.g. Souphanouvong Arrival Reported*, *Pol Pot Meets Delegation* and *Khieu Samphan Receives Souphanouvong* (DK News Bulletin), E3/1499, 19 December 1977, ERN (En) 00168361-00168364; Speech by Comrade Nuon Chea, Deputy Secretary of the Central Committee of the Communist Party of Kampuchea at the Banquet of the Assembly of People in Peking, E3/199, 3 September 1978, ERN (En) 00065911; *Cambodian CP Officially Unveiled on Founding Anniversary* (in FBIS Collection), E3/2678, 6 October 1977, ERN (En) 00389470. *See also*, Section 7: Roles and Functions – Nuon Chea, fn. 976.

[985] T. 9 July 2013 (NUON Chea), p. 26; T. 31 October 2013 (NUON Chea), p. 10. *See also*, T. 15 December 2011 (NUON Chea), p. 30; T. 12 January 2012 (NUON Chea), p. 9.

Committee Meeting held in March 1976 and attended by him.[986] The Assembly met rarely, possibly only once during the DK period and did not pass any laws.[987]

7.4.2. *Acting Prime Minister*

321. NUON Chea denied having ever been appointed as Acting Prime Minister of DK. Although recognising that POL Pot took a period of leave of absence, in 1976, he indicated that SON Sen was the person appointed to substitute for POL Pot.[988]

322. Other evidence before the Chamber contradicts this testimony. Several documents report the official appointment of NUON Chea as Acting Prime Minister of DK in September 1976 pending and during POL Pot's absence.[989] Other contemporary DK documents up to late 1977, including national and international news reports of meetings at the diplomatic level, confirm this appointment.[990] These

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[986] Standing Committee Minutes, E3/232, 8 March 1976, ERN (En) 00182630 (Among others POL Pot, KHIEU Samphan and NUON Chea attended this meeting where it was recommended to "[…] not speak playfully about the Assembly in front of the people to let them see that we are deceptive, and our Assembly is worthless").

[987] T. 19 July 2012 (Expert David CHANDLER), pp. 113-114; T. 9 May 2013 (Expert Philip SHORT), p. 70; T. 26 January 2012 (PRAK Yut), pp. 72-81 (indicating that while her and her husband were told that they had been elected, they did not know of any elections and they never went for any meeting of the Assembly); T. 10 January 2013 (UNG Ren), pp. 27-28 (indicating that while he was informed about his election, he did not know of any elections being held and was never called for any meeting of the Assembly); T. 4 September 2012 (NORNG Sophang), p. 36 (indicating that he received only one message from NUON Chea convening members of the Assembly). *See* Section 5: Administrative Structures, paras 233-238.

[988] T. 11 January 2012 (NUON Chea), pp. 33-37; T. 9 February 2012 (NUON Chea), pp. 27, 53-55; T. 9 July 2013 (NUON Chea), p. 27; T. 31 October 2013 (NUON Chea), pp. 12-13.

[989] French Embassy Telegram, Subject: Invitation of Mr. Pol Pot to Peking, E3/486, 29 September 1977, ERN (En) 00658709 (official announcement on Radio Phnom Penh of the existence of CPK and POL Pot's trip to China, also noting that NUON Chea had taken over "as acting prime minister" during POL Pot's extended absence since 26 September 1976); *Pol Pot's Temporary Sick Leave from Premiership* (in SWB Collection), E3/192, 28 September 1976, ERN (En) 00003883 (statement by KHIEU Samphan, President of the State Presidium appointing NUON Chea to "replace comrade Pol Pot temporarily and assume the role of Acting Premier"). *See also, Pol Pot Takes 'Temporary' Leave from Post* (in FBIS Collection), E3/280, 26 September 1976, ERN (En) 00168118; *President Nuon Chea Receives the Albanian Ambassador* (DK News Bulletin), E3/269, 11 November 1976, ERN (En) 00525825.

[990] French Ministry of Foreign Affairs Memorandum, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, ERN (En) 00525811 (referring to the temporary retirement of the Cambodian Prime Minister, POL Pot); *Nuon Chea Receives Albanian Ambassador* (in FBIS Collection), E3/281, 17 October 1976, ERN (En) 00168071; French Embassy Telegram, Subject: Information and Personal Accounts on Cambodia, E3/485, 24 January 1977, ERN (En) 00519825; *Khieu Samphan, Nuon Chea Greet Pakistani National Day* (in FBIS Collection), E3/285, 22 March 1977, ERN (En) 00168531; *Acting Premier Greets Burmese Counterpart on Election*, *Bulgarian Leaders' Message*, *Yugoslavia's Djuranovic* and *Bhutto's Message* (in FBIS Collection), E3/286, 1-20 April 1977, ERN (En) 00168192, 00168222, 00168231-00168232; *Leaders Greet Vietnamese on Victory Anniversary* and *Khieu Samphan, Nuon Chea Greet Sri Lanka Leaders* (in FBIS Collection),

documents are corroborated by Witness KAING Guek Eav who heard a radio message announcing POL Pot's leave and NUON Chea's temporary appointment to the role of acting Prime Minister.[991] Furthermore, in his interview with Stephen HEDER in 1996, IENG Sary stated that NUON Chea replaced POL Pot as DK Prime Minister in 1976.[992] In addition, there is evidence that, in his capacity as Acting Prime Minister, NUON Chea delivered a speech on the occasion of the 9th Anniversary of the RAK, on January 1977.[993]

323. The Chamber is therefore satisfied that from September 1976 on several occasions NUON Chea officially exercised the role of Acting Prime Minister of DK, up until 1977 when POL Pot resumed his duties.[994]

7.5. Roles in Propaganda and other related Matters

324. In several instances before the Chamber, NUON Chea reiterated that, within the Party Centre and throughout its existence, he had primary responsibility for propaganda-related matters as well as for education of peasants, cadres and other Party members, focusing in particular on the main principles and the economic policies of the Party.[995]

E3/287, ERN (En) 00168121-00168122, 00168151; *Nuon Chea Greets Malaysia Leader on National Day*, *Cambodian Leaders Greet SRV Leaders on National Day*, *Burmese Foreign Minister Concludes Visit* and *Khieu Samphan – Nuon Chea Message* (in FBIS Collection), E3/143, 22 August - 8 September 1977, ERN (En) 00168724, 00168727, 00168729, 00168738.

[991] T. 20 March 2012 (KAING Guek Eav), p. 11.

[992] IENG SARY Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417626 (stating that NUON Chea replaced POL Pot as Prime Minister, despite the fact that he held the position of First Deputy Prime Minister and was therefore next in line to replace POL Pot). *See also*, CD-Cam Article: *The True Fact About Pol Pot's Dictatorial Regime*, E3/86, 8 September 1996, ERN (En) 00081215 ("it was Nuon Chea, the personality No. 2 in the Party and then President of the National Assembly who was designated by Pol Pot to replace him as Prime Minister ad interim").

[993] *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS Collection), E3/147, 17 January 1977, ERN (En) 00168465; *9th Anniversary of Founding of Revolutionary Army*, E3/544, 28 January 1977, ERN (En) 00005866; *Nuon Chea's speech at Army Anniversary meeting* (in SWB Collection), E3/191, 20 January 1977, ERN (En) 00004073.

[994] The last reports referring to NUON Chea as acting Prime Minister of DK are dated September 1977, on the occasion of the visit of a Burmese delegation and of the anniversary of the Democratic People Republic of Korea. *See* FBIS Collection Sept. 1977, E3/143. *See also*, Section 7: Roles and Functions – Nuon Chea, fn. 990.

[995] T. 22 November 2011 (NUON Chea), p. 95; T. 15 December 2011 (NUON Chea), pp. 68-71; T. 6 December 2011 (NUON Chea), pp. 4-5; T. 14 December 2011 (NUON Chea), p. 26; T. 8 February 2012 (NUON Chea), p. 38. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817.

325. Several witnesses testified that they attended meetings, training or study sessions at which NUON Chea appeared as the chairman, trainer or speaker. These events were held before and during the DK period at the sector, district, zone or centre levels throughout the country and in Phnom Penh, particularly at the Olympic Stadium and at Borei Keila.[996] During the events, revolutionary policies were discussed, including economic policies and cooperatives; the mobilisation of the forces through the liberated zones; self-reliance and mastery as well as vigilance against internal and external enemies; and self-criticism sessions.[997] NUON Chea was also among the recipients of several telegrams from Party cadres in different areas of Cambodia. These telegrams provided situation reports on various matters, including

[996] T. 2 April 2012 (KAING Guek Eav), pp. 1-3 (stating that, during the DK period, NUON Chea attended commemorative rallies on April of each year, held at the Olympic Stadium or at Borei Keila); T. 20 September 2012 (CHEA Say), pp. 29-34, 37 (attending several political study sessions at the Technological Institute and at Borei Keila, taught by NUON Chea); T. 19 April 2012 (SAUT Toeung), pp. 25-29 (regularly escorting NUON Chea to host training sessions at Borei Keila); T. 6 June 2012 (SAO Sarun), pp. 34-39 (describing political trainings held by NUON Chea and POL Pot in Phnom Penh).

[997] T. 11 June 2012 (SAO Sarun), p. 20 (confirming NUON Chea's presence at the September 1978 Party Congress, where he gave presentations on the good management of people by providing housing and food); T. 25 July 2012 (ROCHOEM Tom), pp. 74-80 (stating that, after the liberation of Phnom Penh, NUON Chea attended meetings as an instructor and was teaching at the Vihear Preah Keo. During the study sessions, the main topic was the general situation within the country, including politics and the mass movement, the national democratic revolution and the international situation. People were also asked to criticise themselves during these meetings); T. 30 July 2012 (ROCHEOM Tom), pp. 21-22 (confirming the attendance of NUON Chea in a one month Party training course in December 1976, which also included self-criticism sessions. The main topics of this course were the general situation inside and outside of the country, building the Party and the weaknesses in the implementation of the Movement); T. 6 August 2012 (SUONG Sikoeun), pp. 74-75 (stating that NUON Chea was a speaker during a political education session for Party members at Borei Keila in June 1976. During this meeting, the evolution of the democratic revolution was discussed); T. 27 August 2012 (Civil Party EM Oeun), pp. 26-27 (confirming that NUON Chea spoke at a political education session; before the session started all the trainers, including NUON Chea, were introduced); T. 23 August 2012 (Civil Party EM Oeun), pp. 81-84 (referring to a political training session with participants from the Districts at Borei Keila, during which NUON Chea spoke about the policy to strengthen the Communist and the need of identifying those who were infiltrating the internal Party. NUON Chea referred to soldiers from previous regimes, including NORODOM Sihanouk and LON Nol regimes, and intellectuals and students, particularly those who graduated abroad); T. 6 December 2011 (Civil Party KLAN Fit), pp. 58-59 (attending political education sessions for the Zone committee in Phnom Penh in which NUON Chea was the lecturer or trainer. The topic of these sessions was the rebuilding of the structure of the country in order to ensure its independence); T. 29 May 2012 (NY Khan), pp. 3-5 (attending a Zone assembly in the West Zone in 1975 during which NUON Chea was present. The assembly discussed the end the war, the re-establishment of the economy as well as self-reliance and mastery); T. 21 May 2013 (PRUM Som) pp. 32-36 (describing a meeting held in the North Zone during which NUON Chea introduced KANG Chap as the new Zone Chairman and spoke about rice production and the need to be vigilant against the enemies); T. 25 April 2013 (RUOS Suy) pp. 52-58 (participating in study sessions during which NUON Chea said that SAO Phim and KOY Thuon were traitors).

not only the progress in the implementation of the agricultural policies and the training of cadres, but also discipline and punishment of individuals.[998]

326. On 9 October 1975, during a Standing Committee meeting, NUON Chea was entrusted with responsibility for "Party Affairs, Social Action, Culture, Propaganda and Education".[999] NUON Chea attended CPK Standing Committee meetings at which propaganda and education matters were discussed.[1000] During a meeting held on 1 June 1976 to discuss progress in propaganda-related matters, NUON Chea, identified as the Deputy Secretary of the Standing Committee, made several remarks about the performance of the Ministry of Propaganda and Information, identifying progress but also highlighting areas where improvement was needed. In particular,

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[998] DK Telegram, E3/874, 18 July 1976, ERN (En) 00185060 (Report regarding 10 sector soldiers deserting to Thailand who were linked to enemies and had criticised CPK, and requesting instructions regarding a commerce cadre who had been arrested); DK Telegram, E3/1209, incomplete date, ERN (En) 00522888 (Referring to "internal and external enemies", the construction of dams and canals in the North Zone and shortage of medicine); DK Telegram, E3/1192, 12 October 1976, ERN (En) 00508560 (Stating that a telegram has been received from NUON Chea, that a commerce group has been assigned for Phnom Penh); DK Telegram, E3/1222, 24 September 1976, ERN (En) 00143522 (describing the situation Kampong Som, including the arrests of people who had fled into the jungle and rice crop growing); DK Telegram, E3/1221, 25 June 1977, ERN (En) 00182769 (Reporting about arrests of traitors in Kampong Cham Province); DK Telegram, E3/1200, 8 May 1977, ERN (En) 00590306 (Telegram from the Agriculture Group of the Northwest Zone Secretary to the Chinese Embassy describing the request for agricultural tools for farming); DK Telegram, E3/1103, 7 November 1976, ERN (En) 00509692 (Requesting approval for a comrade to travel to Phnom Penh to study radio communication coding); DK Telegram, E3/953, 2 April 1976, ERN (En) 00182658-00182660 (Describing the enemy situation, health, crop production, and morale in the North Zone, including the tracking of "agents imbedded inside" and problems with fever and sickness due to "working and overheating"); DK Telegram, E3/1195, 25 November 1976, ERN (En) 00519519 (Reporting on political education and technical training, and requesting permission for individuals to attend training); DK Telegram, E3/1097, 29 March 1978, ERN (En) 00377841 (Reporting on the arrest of two combatants traveling without permit, and requesting guidance as to how to proceed); DK Telegram, E3/956, 25 June 1977, ERN (En) 00182769 (Reporting on the arrest of 24 persons from Prey Chhor District, and request for guidance as to how to proceed); DK Telegram, E3/1189, incomplete date, ERN (En) 00590301 (asking information on training by the Party); DK Telegram, E3/1663, 18 October 1976, ERN (En) 00548893 (Acknowledging receipt of a telegram containing instructions regarding the 4 year plans, and stating that the sector party has been informed); DK Telegram, E3/1118, 6 November 1976, ERN (En) 00436997 (Requesting NUON Chea for water pumps and trucks to carry material for road construction); DK Telegram, E3/1144, 5 September 1977 (Discussing a number of matters including the enemy situation on the border with Thailand, the discovering of several internal enemies, including members of the LON Nol regime, farming, living conditions and re-education); DK Telegram, E3/156, 23 April 1978, (reporting about the arrest and detention of a comrade for committing "immoral acts").

[999] Standing Committee Minutes, E3/183, 9 October 1975, ERN (En) 00183393.

[1000] Standing Committee Minutes, E3/228, 9 January 1976, ERN (En) 00182614; Standing Committee Minutes, E3/231, 8 March 1976, ERN (En) 00183360; Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182715.

NUON Chea raised concerns about having "intellectuals" working as authors in the Ministry and stated that individuals from the base should be recruited. [1001]

327. Witness KHIEV En, a technician working in the Ministry of Propaganda and Information, confirmed that NUON Chea visited the Ministry and took over the responsibility for the Ministry from YUN Yat in mid-1978.[1002]

328. According to the Closing Order, as part of his responsibility for Party affairs, propaganda and education, NUON Chea was in charge of the Organisation Committee of the Party, responsible for organisational matters including monitoring of Party members and their induction in offices and ministries.[1003] While there is no direct evidence of any formal appointment to this role, Witness SALOTH Ban, POL Pot's nephew who worked at the Ministry of Foreign Affairs and had particular knowledge of the roles of POL Pot and NUON Chea and their relationship, testified that NUON Chea was in charge of the appointment and discipline of Party members.[1004] This role was confirmed by Witness NORNG Sophang, a CPK telegram operator who worked in several offices, who stated that telegrams regarding the internal security situation and the violation of the Party moral code by cadres were directed to NUON Chea.[1005] With regard to the responsibility for "Party Affairs, Social Action, Culture, Propaganda and Education" conveyed upon NUON Chea on 9 October 1975 by a delegation of the CPK Standing Committee, discussed above, KAING Guek Eav

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[1001] Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182718-19.

[1002] T. 1 October 2012 (KHIEV En), pp. 32-36, 47-48, 58-59, 86-87; T. 2 October 2012 (KHIEV En), pp. 6-7, 33-34, 49-50. *See also*, T. 22 August 2012 (KIM Vun), pp. 37, 69-70; T. 23 August 2012 (KIM Vun), pp. 29, 36-37 (Stating that NUON Chea's role at the Ministry related to agricultural education). Witness PHAN Van testified that IENG Thirith would often travel to K-3 to report to NUON Chea about matters relevant to the Ministry of Health and Social Affairs. *See* T. 12 December 2012 (PHAN Van), pp. 20-21.

[1003] Closing Order, para. 880, citing, among others, IENG SARY Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417611 .

[1004] T. 23 April 2012 (SALOTH Ban), pp. 69-70; T. 30 April 2012 (SALOTH Ban), p. 74.

[1005] T. 3 September 2012 (NORNG Sophang), pp. 26-28 (indicating that matters concerning the internal security situation and the violation of moral codes was referred to NUON Chea because he was "in charge of the people"); T. 29 August 2012 (NORNG Sophang), p. 50 ("But as for cultural affairs, for example if there was any moral issues among people in society, I believe it was Nuon Chea who was the person in charge"). *See also*, DK Telegram, E3/513, 23 April 1978.

indicated that "Party Affairs" referred to the recruitment of new members as well as the monitoring and imposition of disciplinary actions on Party members.[1006]

329. The Chamber accordingly finds that NUON Chea's formal responsibility for propaganda and education-related matters also extended to the discipline of cadres and other internal security matters.

7.6. Role in the Military and Security Apparatus

330. NUON Chea denied having ever had any role or responsibility in matters concerning security, including military affairs and internal security, during DK or throughout the CPK period.[1007] In contrast to this testimony, the Chamber considered a great deal of evidence demonstrating that NUON Chea was involved in military and security matters both prior to and during the DK period.

7.6.1. *Membership of the CPK Military Committee*

331. According to the Closing Order, during the period of Democratic Kampuchea NUON Chea was a member of the Military Committee of the CPK Central Committee and was responsible for security and military affairs.[1008] NUON Chea confirmed the existence of the Military Committee, but consistently denied being a member of it.[1009]

332. While in the *KAING Guek Eav* Trial Judgement, this Chamber found that NUON Chea was a member of the Military Committee,[1010] the evidence on this point in the instant trial was conflicting. In an interview with Stephen HEDER, IENG Sary indicated that the Military Committee existed and that NUON Chea was part of it,

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[1006] T. 5 April 2012 (KAING Guek Eav), p. 98-99. *See also,* T. 21 March 2012 (KAING Guek Eav), p. 74.
[1007] T. 14 December 2011 (NUON Chea), p. 26; T. 12 January 2012 (NUON Chea), p. 33; T. 30 January 2012 (NUON Chea), p. 12; T. 31 January 2012 (NUON Chea) p. 35.
[1008] Closing Order, paras 873-879. *See* Section 5: Administrative Structures, para. 204.
[1009] T. 6 December 2011 (NUON Chea), p. 4; T. 14 December 2011 (NUON Chea), pp. 25-26; T. 12 January 2012 (NUON Chea), p. 40; T. 8 February 2012 (NUON Chea), p. 40; T. 9 February 2012 (NUON Chea), pp. 22-24; T. 9 July 2013 (NUON Chea), p. 27. *See also,* NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817.
[1010] *Kaing Guek Eav* Trial Judgement, para. 95. The Trial Chamber mainly relied upon the testimony of Expert Craig ETCHESON, who testified in that trial. *See* T. 18 May 2009 (Expert Craig ETCHESON), pp. 81-82; T. 28 May 2009, (Expert Craig ETCHESON), p. 61.

together with POL Pot and SON Sen, among others.[1011] At trial Witness SUONG Sikoeun clarified previous statements made before the Co-Investigating Judges and indicated that he heard of NUON Chea being a member of the Military Committee only after 1979, from articles and books he read and that he did not know personally whether NUON Chea was a member of the Military Committee of the Central Committee during the DK period.[1012] Expert Philip SHORT does not believe that NUON Chea was a member of the Military Committee, although he stated that through his political leadership within the Party, NUON Chea exercised control over the military.[1013] Similarly, discussing NUON Chea's role *vis à vis* that of the Military Committee, Expert David CHANDLER believes that, due to his position within the Party, NUON Chea exercised a prominent role in the Party policy and decision-making process, including those matters relevant to military affairs.[1014]

333. In light of the Accused's denial that he was a member of the CPK Military Committee and the inconsistencies of evidence presented at trial, the Chamber cannot conclude beyond reasonable doubt that NUON Chea was a member of the Military Committee during the DK period.

7.6.2. *Involvement in Other Military and Security Related Matters*

334. NUON Chea was closely involved in the decision to include revolutionary violence in the Party policies and ultimately, in 1968, to initiate the armed struggle.[1015] There is also evidence that, during the GRUNK period, NUON Chea was

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[1011] IENG SARY Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417606; *See also*, IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, ERN (En) 00342501-02. There is additional evidence, also attributed to IENG Sary, that NUON Chea was a member of the Military Committee of the Central Committee, with responsibility for political affairs. *See* Fifth Party Congress Meeting Minutes, E3/816, 2 November 1978, ERN (En) 00281339.

[1012] T. 6 August 2012 (SUON Sikeoun), p. 69. Witness SUONG Sikeoun previously told the OCIJ that NUON Chea was a member of the Military Committee. *See* SUONG Sikoeun Interview Record, E3/42, 6 May 2009, ERN (En) 00327218; SUONG Sikoeun Record of Interview, E3/1699, 19 December 2007, ERN (En) 00223642.

[1013] T. 6 May 2013 (Expert Philip SHORT), pp. 82-84; T. 9 May 2013 (Expert Philip SHORT), pp. 37-38.

[1014] T. 18 July 2012 (Expert David CHANDLER), pp. 36-37.

[1015] T. 22 November 2011 (NUON Chea), pp. 86-87; T. 6 December 2011 (NUON Chea), p. 20; T. 13 December 2011 (NUON Chea), pp. 5, 47-49; T. 11 January 2012 (NUON Chea), pp. 32-33; NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184669-73. *See also*, T. 20 June 2012 (YUN Kim), pp. 78-81 (stating that, in 1973, during a meeting in Phum Dar for the commune chiefs of Kratie Province, NUON Chea spoke about the enemy situation, distinguishing between American, Vietnamese and internal enemies).

appointed as the Vice-President of the High Military Command of the People's Armed Forces for the Liberation of Kampuchea and the Chief of the Army Political Directorate, although appointments made in this context do not necessarily reflect actual authority.[1016]

335. NUON Chea was also involved in the procurement of arms and ammunitions for use by the movement, particularly from China, via Vietnam.[1017] In 1973, NUON Chea was also entrusted by POL Pot with the responsibility to provide security for the visit of NORODOM Sihanouk to the liberated areas in Cambodia.[1018] Finally, NUON Chea also confirmed having participated in the planning and decision-making regarding the final attack on Phnom Penh, participating in several meetings during which the military advance of the CPNLAF and the plans for the liberation of the capital in 1975 and moving to the forward command base of B-5 for the final assault of Phnom Penh were devised.[1019]

336. During the DK period, NUON Chea's involvement in external security matters primarily involved the escalating violence between Cambodia and Vietnam. In a meeting of the Standing Committee in March 1976, during which POL Pot was absent, NUON Chea made several comments and provided instructions concerning the border situation with Vietnam, indicating that both political and diplomatic measures were required, as well as military force.[1020] NUON Chea was also present

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[1016] *NUFK and RGNUC Reinforced* (Vietnam Courrier), E3/3709, 3 April 1972. *See also*, *Cambodia: The Pieces Begin to Fit* (Far Eastern Economic Review), E3/1782, 21 October 1977, ERN (En) 00007521-22; Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, E3/482, p. 12, ERN (En) 00523996.

[1017] T. 22 November 2011 (NUON Chea), pp. 94-95; T. 13 December 2011 (NUON Chea), pp. 18-20, 28-29 (Indicating that he was instructed by the Central Committee to liaise with Vietnam to obtain arms and ammunition provided by China for use during the final attack on Phnom Penh); T. 8 February 2012 (NUON Chea), pp. 10, 13-17.

[1018] T. 22 November 2011 (NUON Chea), pp. 93-94; T. 5 December 2011 (NUON Chea), pp. 52-53; T. 14 December 2011 (NUON Chea), pp. 22-25; T. 31 January 2012 (NUON Chea), pp. 35-37.

[1019] T. 13 December 2011 (NUON Chea), pp. 26-30; T. 14 December 2011 (NUON Chea), pp. 2-3; T. 30 January 2012 (NUON Chea), pp. 14-17; T. 6 June 2013 (NUON Chea), pp. 37-41; NUON Chea Interview by KHEM Ngun, E3/3, Undated, ERN (En) 00184673. *See also*, T. 3 October 2012 (MEAS Voeun), p. 93; T. 4 October 2012 (MEAS Voeun), pp. 8-9; T. 31 July 2012 (ROCHEOM Tom), pp. 44-45; T. 26 July 2012 (ROCHEOM Tom), pp. 12-16, 24-25 (confirming the attendance of NUON Chea at a Central Committee meeting with Zone leaders, regarding the preparation of the liberation of Phnom Penh, in June 1974 near Phum Meak village).

[1020] Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182656-57.

and made comments in other Standing Committee meetings during which the border situation with Vietnam was discussed.[1021]

337. Numerous surviving telegrams concerning the situation on the battlefields as well as on the border with Vietnam were copied to NUON Chea.[1022] There is also evidence that, in certain instances, NUON Chea provided comments and instructions on these matters.[1023]

338. NUON Chea was also involved in matters relating to the activities of the military other than the conflict in Vietnam. He was present during a Standing Committee meeting held in May 1976, at which the construction of a covert weapons factory and an airfield were discussed, as well as at a prior meeting in February 1976, at which several matters of national defence were debated.[1024] NUON Chea was present during another Standing Committee meeting held in May 1976, discussing the

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[1021] Standing Committee Minutes, E3/217, 11 March 1976; Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182695, 00182697-99 and 00182705.

[1022] DK Telegram, E3/893, 26 January 1976 (reporting on a meeting with a Vietnamese delegation regarding several territory and border issues); DK Telegram, E3/871, 21 March 1976 (informing Brother POL Pot on the border situation and of the capturing of Vietnamese); DK Military Telegram, E3/240, 15 June 1977 (notifying Angkar of the arrest of 209 Vietnamese soldiers and requesting its comments/decision on how to proceed); DK Telegram, E3/882, 12 August 1977 (notifying Angkar that "the Kampuchean army has committed mass killings of 1000 ordinary Vietnamese people at Ha Tien in Kien Giang province"); DK Telegram, E3/885, 24 September 1977 (reporting on the situation in the battlefield); DK Telegram, E3/895, 12 November 1977 (reporting on the situation along Road 22 where enemy troops were attacked); DK Telegram, E3/908, 25 December 1977 (requesting Angkar's instructions and decisions in accordance with the situation that arose when the Yuon confiscated the Memot rubber plantation and surroundings); DK Telegram, E3/243, 19 January 1978 (notifying Brother Pol of the situation in Sector 23, Sector 24 and the battlefield at Road Number 22); DK Telegram, E3/1021, 3 March 1976 (informing about the situation at the border on Road 19); DK Telegram, E3/976, 6 November 1977 (informing that the instructions on the enemy invasion in the vicinity of Trapeang Phlong were successfully carried out with great victory and splendor); DK Telegram, E3/998, 23 March 1978 (reporting on the task of smashing the enemy aggressor Yuon at Paung and Trapeang Phlong villages); DK Telegram, E3/155, 23 April 1978 (reporting about the situation of the outside enemy and the enemies inside the Party); DK Telegram, E3/892, 29 October 1977 (also reporting about the arrest of Vietnamese and inquiring whether these should be sent to Office 870); DK Telegram, E3/867, 20 March 1978. Other telegrams refer to the enemy situation on the border with Thailand: DK Telegram, E3/1144, 5 September 1977. *See also*, DK Telegram, E3/974, incomplete date; DK Telegram, E3/883, 27 August 1977.

[1023] KHAM Phan Interview Record, E3/58, 21 November 2008, ERN (En) 00250089 (stating that typewritten records regarding security matters were sent to NUON Chea and that NUON Chea "regularly instructed on security matters such as to be vigilant of Vietnamese enemy or insider enemy, the ambition of Vietnam, and ideological tasks for education to the district level."); Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498267 (referring to a statement of Ya that in June/July 1976 he was instructed by NUON Chea to write a telegram to a Vietnamese liaison cadre proposing a ceasefire and a meeting to resolve the border issues).

[1024] Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/229, 22 February 1976.

tasks of the army in defending and building the country, and its involvement in agricultural production.[1025] Finally, in addition to the telegrams concerning the battlefields and Vietnam, referred to above, NUON Chea was also the recipient of other telegrams concerning activities of the military, particularly Division 164 of the RAK.[1026]

339. The Special Issue of the *Revolutionary Flag* of December 1976-January 1977 reproduces a commemorative speech given on the occasion of the 9th anniversary of the RAK in Cambodia.[1027] At trial, NUON Chea denied giving the speech and stated that SON Sen was the one who delivered it.[1028] Contemporaneous news reports, however, reproduce excerpts of the same speech and uniformly indicate that it was NUON Chea who delivered the speech on 16 January 1977 in his capacity as Acting DK Prime Minister.[1029]

340. NUON Chea was also involved in the purges of cadres and military, particularly from the East Zone. In 1978, he participated in a meeting with other Party leaders, including POL Pot, SON Sen and Ta Mok, as well as several military commanders, during which members of the East Zone, particularly SAO Phim, were declared internal enemies of the Party to be purged. During the meeting, NUON Chea spoke of the arrest of several members of the East Zone.[1030]

[1025] Standing Committee Minutes, E3/224, 30 May 1976.

[1026] DK Telegram, E3/519, 29 March 1978 (concerning the arrest of two combatants for travelling without a travel permit and identification and requesting that their commander be informed and confirm their identity); DK Telegram, E3/1135, incomplete date (concerning the disappearance of the wife of a cadre Division 164 and bearing an annotation from SON Sen addressed to NUON Chea requesting him to take action against people suspected to be involved in this event); DK Telegram, E3/915, 31 December 1977 (acknowledging receipt of instructions from the Party Center concerning Vietnamese intruders and indicating Division 164 determination to be an absolute tool for the defence of the Party, the peasants and the country against all enemies); DK Report, E3/928, 1 April 1978, (informing about the testing of mines and requesting for machineguns). *See also,* DK Telegram, E3/1222, 24 September 1976; DK Telegram, E3/1223, 27 September 1976; DK Telegram, E3/1224, 6 October 1976; DK Telegram, E3/1225, 6 October 1976; DK Telegram, E3/1226, 8 October 1976. Each of these last five telegrams was copied to NUON Chea and SON Sen.

[1027] *Revolutionary Flag*, E3/25, December 1976-January 1977, ERN (En) 00491406-37.

[1028] T. 11 January 2012 (NUON Chea), pp. 33-34; T. 9 February 2012 (NUON Chea), pp. 24-27.

[1029] *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS Collection), E3/147, 17 January 1977, ERN (En) 00168465; *9th Anniversary of Founding of Revolutionary Army*, E3/544, 28 January 1977, ERN (En) 00005866; *Nuon Chea 's speech at Army Anniversary Meeting* (in SWB Collection), E3/191, 20 January 1977, ERN (En) 00004073.

[1030] T. 22 April 2013 (CHHOUK Rin), pp. 27-28; 23 April 2013 (CHHOUK Rin), pp. 48-49, 95-96. *See also,* T. 9 May 2013 (Expert Philip SHORT), p. 25; T. 25 April 2013 (RUOS Suy) pp. 52-58

341. Actual membership of the Military Committee was of little significance due to NUON Chea's very senior positions within the Party. The Chamber finds that NUON Chea received detailed information about and had considerable influence on DK military policy and its implementation.

7.6.3. ***Supervision of S-21 Security Office***

342. NUON Chea denied any involvement with the operation of S-21, subsequently availing himself of his right to remain silent when asked questions on this topic.[1031]

343. Witness KAING Guek Eav, who chaired the S-21 Security Office from 1976 to 1979, discussed at length NUON Chea's role in connection with internal security matters, particularly the operation of S-21. KAING Guek Eav regularly reported to NUON Chea about his activities at S-21 and NUON Chea often provided him instructions with regard to confessions and the treatment of the detainees.[1032] More particularly, NUON Chea requested that KAING Guek Eav have the names of certain Party members removed from confessions accusing them of betraying the Party, including references to KHIEU Samphan.[1033] KAING Guek Eav testified that NUON Chea's involvement with the operation of S-21 intensified significantly in August 1977, after SON Sen was transferred to the border with Vietnam as the conflict with

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(participating in study sessions during which NUON Chea said that SAO Phim and KOY Thuon were traitors).

[1031] T. 18 April 2012 (NUON Chea), pp. 3-7; T. 7 July 2013 (NUON Chea), p. 27. *See also,* T. 31 October 2013 (NUON Chea), p. 12 (indicating that he never met, supervised or gave any order to KAING Gueak Eav).

[1032] T. 20 March 2012 (KAING Guek Eav), p. 21; T. 26 March 2012 (KAING Guek Eav), p. 94; T. 27 March 2012 (KAING Guek Eav), pp. 10 (indicating the NUON Chea instructed that the practice of audio recording confessions be ceased and that these be prepared in written form, instead), 47-53 (discussing his meetings with NUON Chea about the activities of S-21); T. 3 April 2012 (KAING Guek Eav), p. 10 (indicating that NUON Chea requested that certain S-21 prisoners had their pictures taken to confirm that they had died); T. 9 April 2012 (KAING Guek Eav), p. 8; MAM Nai Interview Record, E3/351, 7 November 2007, pp. 17-18, ERN (En) 00162921-22 (indicating that KAING Guek Eav would transmit S-21 confessions to the Central Committee, which he knew also included NUON Chea); (T. 18 July 2012 (Expert David CHANDLER), pp. 112-113. *See also,* T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 45-47 (indicating that cases of major wrongdoings contained in S-21 confessions involving staff at the Ministry of Foreign Affairs were reported by NUON Chea to IENG Sary).

[1033] T. 3 April 2012 (KAING Guek Eav), pp. 55-57; T. 29 March 2012 (KAING Guek Eav), p. 80. *See also,* S-21 Confession - CHAP Mit, E3/1688, ERN (En) 00284069 (containing an annotation from KAING Guek Eav that NUON Chea instructed that the names of certain individuals be removed from this confession); T. 20 July 2012 (Expert David CHANDLER), pp. 37, 39-40 (identifying KAING Guek Eav annotation on CHAP Mit's confession and concluding that NUON Chea reviewed that confession and was aware of the operation of S-21).

Cambodia escalated.[1034] A number of S-21 confessions placed on the case file contain annotations indicating that these were forwarded to NUON Chea.[1035] Witness SAUT Toeung, NUON Chea's bodyguard and driver, also confirmed having delivered several documents from KAING Guek Eav to NUON Chea and vice versa.[1036] In a video-recorded interview after the DK period, NUON Chea confirmed to a journalist that he received confessions and used some of them to draw lessons to educate cadres against the enemy but also stated that the there were "so many" confessions that he did not have time to read all of them.[1037]

344. The Co-Prosecutors also submit that KAING Guek Eav identified annotations made on S-21 confessions and other related documents as belonging to NUON Chea.[1038] Given KAING Guek Eav's limited familiarity with NUON Chea's

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[1034] T. 27 March 2012 (KAING Guek Eav), pp. 14, 38-39, 47; T. 5 April 2012 (KAING Guek Eav), p. 110; T. 10 April 2012 (KAING Guek Eav), pp. 92-93.

[1035] S-21 Confession - KUNG Kien alia EUNG Vet, E3/1565, 26 May 1977, ERN (En) 00182773; S-21 Confession - Tiv Mei *alias* Santepheap, E3/1537, 18 September 1977, ERN (En) 00224639; S-21 Confession - CHAP Mit, E3/1688, ERN (En) 00284069; S-21 Confession - Khek Bin *alias* Sou, E3/1706, 26 July 1977, ERN (En) 00224632; S-21 Confession - TEUT San, E3/1828, undated, ERN (En) 00767942; S-21 Confession - PHON Phal, E3/1879, 11 June 1977, ERN (En) 00182725; S-21 Confession - UM Tauy, E3/3697, 21 July 1977, ERN (En) 00822359; S-21 Confession - HEM Soth *alias* Sien, E3/1842, ERN (En) 00662317; S-21 Confession - PHENG Sun *alias* Chey, E3/3665, 13 October 1977, ERN (En) 00224634; S-21 Confession - CHUM Penh, E3/2129, 9 November 1977, ERN (En) 00769567; S-21 Confession - SAO Tong Ly, E3/1889, 18 October 1977, ERN (En) 00796688; S-21 Confession - PECH Chay, E3/1875, 9 November 1977, ERN (En) 00748373; S-21 Confession - SIENG Pauy *alias* SEAN, E3/1894, 28 October 1977, ERN (En) 00702082; S-21 Confession - CHAP Veuan, E3/1882, 18 October 1977, ERN (En) 00662308; S-21 Confession - CHEA Sreng *alias* Thal, E3/1831, 22 October 1977, ERN (En) 00831455; S-21 Confession - LUN In, E3/3689, 21 October 1977, ERN (En) 00221784; S-21 Confession - DI Leng *alias* Pheap, E/1839; S-21 Confession - EUM Chhea, E3/1841, 25 November 1977, ERN (En) 00662314; S-21 Confession - MAO Choeun *alias* Ly, E3/3645, ERN (En) 00223137; S-21 Confession - SIENG Phon *alias* Pha, E3/3648, 10 November 1977, ERN (En) 00221765; S-21 Confession - SAK Man *alias* Veuan, E3/1886, 11 November 1977, ERN (En) 00842788; S-21 Confession - CHOUT Nhe, E3/1687, ERN (En) 00758196; S-21 Confession - HANG Bau, E3/1843, 11 March 1977, ERN (En) 00746208; S-21 Confession - TAING An *alias* En, E3/1826, 31 October 1977, ERN (En) 00821424.

[1036] T. 18 April 2012 (SAUT Toeung), p. 44; T. 19 April 2012 (SAUT Toeung), pp. 14-22; *See also*, T. 26 March 2012 (KAING Guek Eav). p. 41 (confirming that SAUT Toeung collected S-21 confessions for NUON Chea).

[1037] Video of NUON Chea Interview by THET Sambath, E93/7.3R, ERN V00717048.

[1038] T. 27 June 2013 (Document Hearing), pp. 60-64, referring to the following documents and annotations: S-21 Confession - KUNG Kien alia EUNG Vet, E3/1565, 26 May 1977, ERN (En) 00182773 ("Excerpts sent to Comrade Pok"), S-21 Confession - San Eap *alias* Khon, E3/175, 17 April 1978, ERN (En) 00223903 ("to be followed up"); S-21 Confession - MOK Sam-Ol *alias* Hong, E3/1546, 9 January 1978, ERN (En) 00224630 ("It has already been resolved"); S-21 Confession - SAN Pau, E3/1548, 2 August 1978, ERN (En) 00767463 ("Brother Vann"); Letter to Respected and Beloved Angkar by Pal, E3/1098 ("S-21 signature"). *See also*, T. 29 March 2012 (KAING Guek Eav), pp. 39-41.

handwriting, there is some question whether the annotations were made by NUON Chea.[1039]

345. Several foreigners were also imprisoned in S-21. Among these were Vietnamese soldiers, whose arrest and imprisonment at S-21 was communicated to the Party Centre, including NUON Chea.[1040] KAING Guek Eav testified that prior to the fall of DK, NUON Chea ordered him to 'smash' (that is, to execute)[1041] all remaining S-21 inmates. At that time, there were about 500 detainees still being held at S-21.[1042]

346. The Chamber recalls that the allegations concerning NUON Chea's responsibility in connection with the operation of S-21 Security Office were severed from Case 002/01 and will be considered in future proceedings. Accordingly, the Trial Chamber will make no findings in this regard in this Judgement.

7.7. Conclusions

347. While it remains unclear whether he was a member of the Military Committee of the CPK, NUON Chea's involvement in military and security matters was intrinsically linked with his long standing authority within the Party. NUON Chea actively participated in the operations of the RAK, particularly concerning the war against Vietnam, and he received regular reports and gave instructions with regards to security matters either directly or through decisions of the Party. NUON Chea's role in connection with propaganda and education also extended to and encompassed Party

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[1039] T. 4 April 2012 (KAING Guek Eav), pp. 72-73, 79-82 (also indicating that he first saw annotations purportedly made by NUON Chea on S-21 confession in 1999); T. 5 April 2012 (KAING Guek Eav), pp. 3-9; T. 29 March 2012 (KAING Guek Eav), p. 52.

[1040] T. 2 April 2012 (KAING Guek Eav), pp. 64-68 (indicating that NUON Chea ordered the execution of four foreign nationals); T. 3 April 2012 (KAING Guek Eav), pp. 2-4, 18-19; DK Telegram, E3/867, 20 March 1978, ERN (En) 00847034 (indicating that one captured Vietnamese soldier will be sent to S-21); DK Telegram, E3/181, 14 February 1978 (indicating that two Vietnamese soldiers were captured and asking for their transfer to S-21). *See also, e.g.* S-21 List of Prisoners Categorized as Foreigners, E3/2195.

[1041] KAING Guek Eav Interview Record, E3/453, 5 September 2007, p. 3, ERN (En) 00147581; KAING Guek Eav Interview Record, E3/449, 21 January 2008, pp. 7-8, ERN (En) 00159558-59. *See also,* T. 20 March 2012 (KAING Guek Eav), pp. 17-18; T. 18 July 2012 (Expert David CHANDLER), p. 30; Book by S. HEDER: *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, E3/48, 2004, p. 65, ERN (En) 00393553.

[1042] T. 29 March 2012 (KAING Guek Eav), pp. 10-11; T. 2 April 2012 (KAING Guek Eav), pp. 18-19; T. 9 April 2012 (KAING Guek Eav), pp. 3-4; T. 10 April 2012 (KAING Guek Eav), pp. 89-90.

discipline and internal security matters, as well as more generally the enemy situation, advocating for the uncovering of enemies and their elimination.

348. Due to his seniority within the leadership of the CPK, NUON Chea enjoyed oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period. The Trial Chamber agrees with the views of Experts David CHANDLER and Philip SHORT that, within the Standing Committee NUON Chea with POL Pot, exercised the ultimate decision-making power of the Party. As Deputy Secretary of the Party, his control extended not only to political decisions, but also to the government and the administration of DK and to military matters.[1043] For these reasons, the Chamber finds that NUON Chea held and exercised the power to make and implement CPK policies and decisions.

[1043] T. 18 July 2012 (Expert David CHANDLER), pp. 35-37 (indicating that NUON Chea was active in many spheres of the regime, including military affairs); T. 6 May 2013 (Expert Philip SHORT), pp. 61, 66-67 (indicating the POL Pot and NUON Chea divided among them responsibility for all major aspect of the Party work), 78-80, 82-84 (indicating that, while NUON Chea was not part of the Military Committee, the Party was in control of the military); T. 8 May 2013 (Expert Philip SHORT), pp. 38-40. *See* Section 5: Administrative Structures, para. 202.

8. ROLES AND FUNCTIONS – KHIEU SAMPHAN

349. According to the Closing Order, KHIEU Samphan was a prominent member of the Party Centre whose responsibilities included roles in Office 870, GRUNK, the DK State Presidium and the Ministry of Commerce.[1044]

350. Upon the commencement of the substantive hearing, KHIEU Samphan made an opening statement.[1045] He subsequently answered questions as to his identity and personal background, and commented on certain paragraphs of the Closing Order by reading from a prepared statement.[1046] He also responded briefly to questions from the Chamber about specific documents on the Case File.[1047] Thereafter, KHIEU Samphan decided to exercise his right to remain silent and declined to respond to questions, indicating that he would do so after the presentation of all the evidence by the Co-Prosecutors.[1048] In May and June 2013 he answered a number of questions put to him by Civil Parties.[1049] Shortly afterwards he informed the Chamber that he was again exercising his right to remain silent.[1050] On 31 October 2013 KHIEU Samphan gave his final statement before the Chamber.[1051]

8.1. Background Information and Pre-DK Period

8.1.1. *Early life and career*

351. KHIEU Samphan *alias* "Haem", "Hem" or "Nan" was born on 27 July 1931 in Chek or Rumchek Commune, Rumduol District, Svay Rieng Province.[1052] He

[1044] The roles and functions of KHIEU Samphan are discussed in paras 1131-1152 of the Closing Order. In addition, paras 1536-1537 are relevant to KHIEU Samphan's participation in the Joint Criminal Enterprise.
[1045] T. 23 November 2011 (KHIEU Samphan), pp. 8-18.
[1046] T. 13 December 2011 (KHIEU Samphan), pp. 62-95.
[1047] T. 12 January 2012 (KHIEU Samphan), pp. 56, 61-62, 67, 71, 82
[1048] T. 12 January 2012 (KHIEU Samphan), p. 82; T. 16 January 2012 (KHIEU Samphan), pp. 77-79.
[1049] T. 29 May 2013 (KHIEU Samphan), pp. 18-24, 28-29, 54-55, 85-88; T. 30 May 2013 (KHIEU Samphan), pp. 16-18, 80-83; T. 4 June 2013 (KHIEU Samphan), pp. 24-25, 68-70, 109-110.
[1050] T. 9 July 2013 (KHIEU Samphan), pp. 41-43.
[1051] T. 31 October 2013 (KHIEU Samphan), pp. 68-73.
[1052] T. 13 December 2011 (KHIEU Samphan), pp. 62-63 (admitting the use of the aliases "Haem" and "Nan", and stating that the official name of the village in which he was born was either Chek or Rumchek); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 1, ERN (En) 00156741 (giving KHIEU Samphan's birthplace as Rom Chek); KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, p. 1, ERN (En) 00659091 (giving KHIEU Samphan's date of birth as 27 August 1931 and birthplace as Svay Rieng Province); T. 28 March 2012 (KAING Guek Eav), p. 52

attended primary school in Kampong Cham Province, and went on to attend the Preah Sihanouk secondary or junior high school, also in Kampong Cham, where he first met POL Pot (then known as SALOTH Sar).[1053] After graduating from Preah Sihanouk School, KHIEU Samphan moved to Phnom Penh to attend the Lycée Sisowath.[1054] Following his graduation from the Lycée Sisowath in 1951, he began to study law in Phnom Penh.[1055] In 1953, having been awarded a scholarship by the Cambodian government, he travelled to France to study law and economics.[1056]

352. A few months after his arrival in Paris, KHIEU Samphan joined the 'Marxist Circle' founded and regularly attended by other Khmer students in France including IENG Sary, SALOTH Sar, IENG Thirith and SON Sen.[1057] Shortly afterwards, KHIEU Samphan left Paris for Montpellier, where he studied law and took classes in economics.[1058] He continued to participate in the activities of the Marxist Circle, joining the other members of the Circle for an excursion during one of the summer vacations.[1059]

(confirming that "Hem" was the revolutionary name of KHIEU Samphan); T. 9 October 2012 (MEAS Voeun), pp. 94-95 (confirming that KHIEU Samphan also went by the name "Hem"); T. 18 July 2013 (Stephen HEDER), pp. 45-46 (confirming the use of the *alias* "Hem"); KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089 (stating that KHIEU Samphan signed documents with the name "Hèm").

[1053] T. 13 December 2011 (KHIEU Samphan), p. 65; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979. *See also*, Book by F. PONCHAUD: *Cambodia: Year Zero*, E243.1, p. 152, ERN (En) 00862103; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 31, 33, ERN (En) 00396223, 00396225.

[1054] T. 13 December 2011 (KHIEU Samphan), p. 65. *See also*, Book by D. CHANDLER: *Brother Number One*, E3/17, 1999, p. 21, ERN (En) 00392935; Book by F. PONCHAUD: *Cambodia: Year Zero*, E243.1, p. 152, ERN (En) 00862103.

[1055] T. 13 December 2011 (KHIEU Samphan), p. 71; *See also*,, Biographical Notes by S. Sher, E3/110, undated, p. 1, ERN (En) 00280537.

[1056] T. 13 December 2011, (KHIEU Samphan), pp. 65, 72; KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, p. 1, ERN (En) 00659091; *See also*, Book by F. PONCHAUD: *Cambodia: Year Zero*, E243.1, p. 155, ERN (En) 00862104.

[1057] T. 13 December 2011 (KHIEU Samphan), pp. 71-73; T. 2 August 2012 (SUONG Sikouen), p. 67; IENG Thirith Interview by Elizabeth BECKER, E3/659, October – November 1980, pp. 4-5, 9, ERN (En) 00182301-02, 00182306; Book by E. BECKER: *When the War was Over*, E3/20, 1986, pp. 56-58, 62, ERN (En) 00237761-63, 00237767; T. 14 February 2012, pp. 4-5 (citing Documentary by D. Aronowitsch and S. Lindberg: Facing Genocide - Khieu Samphan and Pol Pot, E109/2.3R, 2010). However, SALOTH Sar left France in 1952, before KHIEU Samphan arrived: T. 13 December 2011 (KHIEU Samphan), p. 71; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979; Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. xv, ERN (En) 00678484.

[1058] T. 13 December 2011 (KHIEU Samphan), p. 72; *See also*, Biographical Notes by S. Sher, E3/110, undated, p. 1, ERN (En) 00280537.

[1059] T. 13 December 2011 (KHIEU Samphan), p. 72; *See also*, Biographical Notes by S. Sher, E3/110, undated, p. 1, ERN (En) 00280537.

353. In 1956, KHIEU Samphan returned to Paris to pursue a doctorate in economics.[1060] He began to attend regular meetings of the Marxist Circle and, upon the departure of IENG Sary, became its leader.[1061] Like other members of the Circle, KHIEU Samphan joined the French Communist Party.[1062] He also assumed the leadership of the Union of Khmer Students ('Union des Étudiants Khmers' or 'UEK'),[1063] which had been founded by "the progressive students" (as Witness SUONG Sikoeun, a former UEK member, described them) under the influence of the French Communist Party.[1064]

354. In 1959 KHIEU Samphan presented his doctoral thesis entitled 'L'Economie du Cambodge et ses Problèmes d'Industrialisation' ('The Economy of Cambodia and its Problems of Industrialisation') at the University of Paris.[1065] In his thesis, KHIEU Samphan characterised the Cambodian economy as "backward" and underdeveloped, partly as a result of "international integration", and proposed fundamental structural reforms (such as a state monopoly on foreign trade, the reduction of land rents, and a new agrarian credit system) aimed at fostering a more self-sufficient nation.[1066] He wrote that it was necessary to drive "landlords, retailers and usurers" away from their "unproductive activities" and "encourage them to participate in production", and to

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[1060] T. 13 December 2011 (KHIEU Samphan), p. 72. *See also*, Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 120-121, ERN (En) 00396312-13.

[1061] T. 13 December 2011 (KHIEU Samphan), pp. 72-73; T. 14 August 2012 (ONG Thong Hoeung), pp. 77-78 (citing Book by ONG T. H.: *J'ai Cru aux Khmers Rouges*, E3/1713); T. 2 August 2012 (SUONG Sikoeun), p. 67; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 120, ERN (En) 00396312.

[1062] T. 13 December 2011 (KHIEU Samphan), pp. 75, 91; T. 25 July 2012 (David CHANDLER), pp. 46, 50; T. 6 May 2013 (Philip SHORT), p. 47; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 34, ERN (En) 00103740 (admitting that he joined the French Communist Party, but alleging that he did not renew his membership card after 1957); Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. xv, ERN (En) 00678484.

[1063] T. 21 May 2013 (Philip JULLIAN-GAUFRES), p. 62; T. 2 August 2012 (SUONG Sikoeun), p. 75

[1064] T. 2 August 2012 (SUONG Sikoeun), p. 70. *See also*, ONG Thong Hoeung Interview Record, E3/97, 22 November 2008, p. 4, ERN (En) 00287100; Book by F. PONCHAUD: *Cambodia: Year Zero*, E243.1, pp. 155-156, ERN (En) 00862104-105 (describing the founders of the UEK as "progressive students", and noting that the UEK had a "representative to the French Communist Party"). The UEK replaced the original Association of Khmer Students ('Association des Étudiants Khmers' or 'AEK'), which was banned or dissolved in 1952 or 1953: THIOUNN Mumm Interview Record, E3/5304, 4 June 2009, p. 2, ERN (En) 00345231; Book by F. PONCHAUD: *Cambodia: Year Zero*, E243.1, p. 154, ERN (En) 00862104.

[1065] T. 13 December 2011 (KHIEU Samphan), p. 74; Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979, p. 21, ERN (En) 00750554.

[1066] T. 13 December 2011 (KHIEU Samphan), p. 74; Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979, pp. 44, 48, 58, 75-80, 100-102, ERN (En) 00750577, 00750581, 00750591, 00750608-13, 00750633-35.

"transfer capital from the hyperactive commercial sector into more directly productive sectors".[1067] He also suggested that "methodical organisation of the peasant force, into mutual teams and then into cooperatives, will magnify its effectiveness ten times over and make possible the clearing of new land, its irrigation, and its draining".[1068]

355. However, the dissertation emphasised the importance of industrialisation and technology for Cambodia's economic development, and did not advocate the abolition of currency or private property.[1069] The Chamber agrees with Expert Philip SHORT that, while in some respects the ideas expressed in KHIEU Samphan's thesis prefigured aspects of CPK ideology, it was not a "blueprint" for the policies that were ultimately enacted during the DK period.[1070]

356. Not long after his return to Cambodia, KHIEU Samphan founded a French-language newspaper called 'L'Observateur'.[1071] KHIEU Samphan denied that the newspaper was communist, but at times it was subtly critical of NORODOM Sihanouk's then government, and some of its major financial backers (including IENG Thirith) were certainly aligned with the burgeoning communist movement in Cambodia.[1072] As a result, KHIEU Samphan was monitored and repeatedly harassed by the authorities, in one instance being assaulted in the street outside his office by a group of men who were probably agents of the secret police.[1073] In 1960, KHIEU

[1067] Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979, pp. 74-75, ERN (En) 00750607-08.
[1068] Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979, p. 104, ERN (En) 00750637.
[1069] T. 6 May 2013 (Philip SHORT), p. 54; T. 13 December 2011 (KHIEU Samphan), pp. 74-75; Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979.
[1070] T. 6 May 2013 (Philip SHORT), p. 51; T. 9 May 2013 (Philip SHORT), pp. 51-53.
[1071] T. 13 December 2011 (KHIEU Samphan), pp. 76-77; T. 6 May 2013 (Philip SHORT), p. 52; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 6, ERN (En) 00103726; IENG Sary Interview by Steve HEDER, E3/89, 17 December 1996, p. 32, ERN (En) 00417630; T. 28 March 2012 (KAING Guek Eav), p. 51.
[1072] T. 13 December 2011 (KHIEU Samphan), pp. 76-78; T. 6 May 2013 (Philip SHORT), p. 52; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 6, ERN (En) 00103726; IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 19, ERN (En) 00182316 ; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 87-88, ERN (En) 00237792-93; T. 7 December 2012 (HUN Chunnly), pp. 108-109.
[1073] T. 13 December 2011 (KHIEU Samphan), pp. 76, 78-80; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, pp. 2-3, ERN (En) 00659101-02; KHIEU Samphan Interview by Radio Free Asia, E3/582, 7 December 2007, p. 1, ERN (En) 00659104; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 90, ERN (En) 00237795.

Samphan was arrested and detained without charge for over a month and 'L'Observateur' was closed down.[1074]

357. After the closure of 'L'Observateur', KHIEU Samphan joined 'Sangkum Reastr Niyum', the political party founded by NORODOM Sihanouk.[1075] In 1962 he was elected to the National Assembly, having been personally endorsed by the NORODOM, and appointed Secretary of State for Commerce.[1076] KHIEU Samphan suggested that this endorsement and appointment was an attempt by NORODOM Sihanouk to win him over to the government's side and, more generally, to gain favour with communist states.[1077] To some extent, NORODOM may also have wished to make use of KHIEU Samphan's academic training in economics.[1078] In his new role, KHIEU Samphan began to implement economic reforms.[1079]

358. In March 1963, following student demonstrations in Siem Reap, NORODOM Sihanouk – who blamed the riots on communists – broadcast a list of 34 known or suspected 'leftists' (including KHIEU Samphan, POL Pot and IENG Sary), who were condemned as "traitors".[1080] KHIEU Samphan nevertheless kept his cabinet post until he was forced to resign in mid-1963.[1081]

[1074] T. 13 December 2011 (KHIEU Samphan), p. 80; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 16, ERN (En) 00762420; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 90, ERN (En) 00237795.

[1075] T. 13 December 2011 (KHIEU Samphan), pp. 83-84; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 3, ERN (En) 00659102.

[1076] T. 13 December 2011 (KHIEU Samphan), pp. 83-84; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 7, ERN (En) 00103726; KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, pp. 1-2, ERN (En) 00659091-92; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 96, ERN (En) 00237801.

[1077] KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103. *See also,* Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 96, ERN (En) 00237801; Book by N. CHANDA: *Brother Enemy: The War After the War*, E3/2376, p. 41, ERN (En) 00192226.

[1078] Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 96, ERN (En) 00237801.

[1079] T. 13 December 2011 (KHIEU Samphan), pp. 84-87; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 96-97, ERN (En) 00237801-02.

[1080] T. 20 July 2012 (David CHANDLER), p. 66; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 17-18, ERN (En) 00498236-37; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 13, ERN (En) 00103729; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 98-99, ERN (En) 00237803-04.

[1081] T. 13 December 2011 (KHIEU Samphan), pp. 86-87; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 13-14, ERN (En) 00103729-30; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, p. 101, ERN (En) 00237806; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 151, ERN (En) 00396351; Book by B.

359. KHIEU Samphan retained his parliamentary seat upon his resignation from the cabinet, and was re-elected to the National Assembly for a second term in 1966.[1082]

360. As a newspaper editor and parliamentarian, KHIEU Samphan was widely reputed to be a man of probity and honour: he was generally perceived to be conscientious, incorruptible and principled, and to lead a relatively modest lifestyle.[1083]

8.1.2. ***Party membership***

361. In April 1967, NORODOM Sihanouk publicly accused KHIEU Samphan and two of his left-wing colleagues in the National Assembly, HU Nim and HOU Youn, of fomenting a peasant uprising in the village of Samlaut, Battambang Province, and threatened to bring them before a military tribunal.[1084] Fearing for their safety, the three men fled Phnom Penh and, at the invitation of the CPK, took refuge in the countryside near Ang Tasom, Takeo Province, under the protection of Ta Mok.[1085]

362. Between 1967 and 1970, KHIEU Samphan moved from village to village in and around Kampong Speu, Kampong Chhnang and Takeo, aided by a clandestine

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KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. xv, ERN (En) 00678484.

[1082] KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, pp. 1-2, ERN (En) 00659091-92; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 16, ERN (En) 00762420; *Khieu Samphan: Out of the Jungle* (Time Magazine), E3/4424, 28 April 1975, p. 21, ERN (En) S 00002604; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 151, ERN (En) 00396351; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 101-102, ERN (En) 00237806-07; *Khieu Samphan Pleads Ignorance On Genocide* (Le Monde), E3/4603, 24 January 2004, p. 3, ERN (En) 00716436.

[1083] T. 6 May 2013 (Philip SHORT), p. 52; T. 20 July 2012 (David CHANDLER), pp. 115-116; T. 7 December 2012 (HUN Chunnly), pp. 109-110; T. 23 April 2013 (CHHOUK Rin), pp. 86-87; T. 9 April 2013 (François PONCHAUD), pp. 10-11; T. 21 May 2013 (Philip JULLIAN-GAUFRES), pp. 69-70; T. 22 May 2013 (CHAU Sockon), pp. 68-69; T. 30 May 2013 (NOU Hoan), p. 34; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 96-97, ERN (En) 00237801-02.

[1084] T. 13 December 2011 (KHIEU Samphan), pp. 87-88; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 21, ERN (En) 00103733; *Khieu Samphan: Out of the Jungle* (Time Magazine), E3/4424, 28 April 1975, p. 21, ERN (En) S 00002604; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 104-105, ERN (En) 00237809-10; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 29-32, ERN (En) 00498248-51; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, pp. 16-17, ERN (En) 00762420-21.

[1085] T. 13 December 2011 (KHIEU Samphan), p. 87; T. 25 July 2012 (David CHANDLER), pp. 40-41; T. 9 May 2013 (Philip SHORT), p. 54; T. 9 October 2012 (MEAS Voeun), p. 40, 44; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 21, 23, 25-26, ERN (En) 00103733-34, 00103735-36.

CPK network.[1086] In 1969, he spent time with Ta Mok at the latter's headquarters near Aoral Mountain, Kampong Speu.[1087] Although IENG Sary and NUON Chea suggested that KHIEU Samphan was already a member of the CPK at this time,[1088] their evidence was not consistent and did not give the Chamber sufficient reason to doubt KHIEU Samphan's testimony that he formally joined the CPK in 1969.[1089] However, the Chamber is satisfied the KHIEU Samphan was in informal contact with senior CPK members from a much earlier date: in particular, he was "in close touch" with the Phnom Penh City Committee – an organisation that would gradually evolve to become the CPK Central Committee – by the early 1960s.[1090]

363. By his own admission, KHIEU Samphan became a candidate member of the CPK Central Committee in 1971 and a full-rights member in 1976.[1091] His membership of the Central Committee was confirmed by witnesses and experts who testified at trial.[1092]

8.1.3. ***1970-1975***

364. In March 1970, following the overthrow of his government by LON Nol, NORODOM Sihanouk announced the formation of the FUNK.[1093] POL Pot sent the NORODOM a message of support in the names of KHIEU Samphan, HU Nim and

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[1086] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 23, 27, ERN (En) 00103734, 00103736.

[1087] T. 13 December 2011 (KHIEU Samphan), pp. 89, 91; T. 3 October 2012 (MEAS Voeun), pp. 105-106; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 36, ERN (En) 00103741; KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 3-4, ERN (En) 00156743-44.

[1088] IENG Sary interview by Steve HEDER, E3/89, 17 December 1996, p. 32, ERN (En) 00417630 (indicating that KHIEU Samphan joined the CPK in 1955); NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 16, ERN (En) 00184667 (suggesting that KHIEU Samphan joined the CPK in 1963).

[1089] T. 13 December 2011 (KHIEU Samphan), p. 91; T. 8 February 2012 (KHIEU Samphan), p. 22.

[1090] T. 7 May 2013 (Philip SHORT), pp. 24-25, 31-32; Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea, KHIEU Samphan, E3/16, p. 7, ERN (En) 00498226; *See* Section 3: Historical Background, para. 84.

[1091] T. 13 December 2011 (KHIEU Samphan), p. 92; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 140, ERN (En) 00103793. *See* Section 3: Historical Background, paras 95, 127, 133-134, 142; Section 5: Administrative Structures, para. 202.

[1092] *See e.g.* T. 6 May 2013 (Philip SHORT), p. 48; T. 10 July 2013 (Stephen HEDER), p. 76; T. 15 July 2013 (Stephen HEDER), p. 43; T. 10 April 2012 (KAING Guek Eav), p. 73; T. 26 April 2012 (SALOTH Ban), p. 3. *See also*, T. 24 July 2012 (David CHANDLER), pp. 113-114, 122-123.

[1093] *See* Section 3: Historical Background, para. 97.

HOU Youn.[1094] At some point between March and September 1970, KHIEU Samphan, HU Nim and HOU Youn moved from Ta Mok's Aoral Mountain base to the CPK senior leaders' headquarters at S-71 near the Stung Chinit River.[1095] KHIEU Samphan has alleged that it was at S-71 that he first met NUON Chea and POL Pot.[1096] However, NUON Chea claimed that he met KHIEU Samphan while the latter was still at Mount Aural, and (although he may not have known POL Pot's true identity until 1970) KHIEU Samphan was acquainted with POL Pot from their school days in Kampong Cham.[1097]

365. In 1970, KHIEU Samphan was named Deputy Chairman of FUNK and Commander-in-Chief of CPNLAF.[1098] In reality, KHIEU Samphan held no direct military authority, and it was POL Pot who was in charge of the CPNLAF forces.[1099] KHIEU Samphan also assumed the posts of Deputy Prime Minister and Minister of National Defence in GRUNK.[1100] Although he told the Chamber that these titles were meaningless, KHIEU Samphan has admitted that he played "an important, if not an indispensable" role as a liaison between the CPK and NORODOM Sihanouk.[1101] HU Nim and HOU Youn were also named as GRUNK ministers;[1102] with KHIEU Samphan, they became the public face of the opposition movement in the early

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[1094] *See* Section 3: Historical Background, para. 97.

[1095] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 39, ERN (En) 00103742 (indicating that they left Mount Aural "immediately after the coup of March 1970"); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 4, ERN (En) 00156744 (stating that they went to the Chinit river area "around September 1970"). *See also*, Section 5: Administrative Structures, para. 211, fn. 649.

[1096] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 39-40, ERN (En) 00103742-42.

[1097] T. 30 January 2012 (NUON Chea), p. 46; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979-80. Section 7: Roles and Functions – Nuon Chea, para. 309; Section 8: Roles and Functions – Khieu Samphan, para. 351.

[1098] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 13 December 2011 (KHIEU Samphan), pp. 90-91; T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 98.

[1099] T. 13 December 2011 (KHIEU Samphan), pp. 90-91; T. 25 April 2012 (SALOTH Ban), p. 45; T. 28 March 2012 (KAING Guek Eav), pp. 54, 58; T. 23 April 2013 (CHHOUK Rin), p. 88; Book by E. BECKER: *When the War was Over*, E3/20, 1986, p. 139, ERN (En) 00237844. *See also*, THIOUNN Prasith Interview Record, E3/96, 8 June 2009, p. 8, ERN (En) 00346945 (stating that POL Pot was the actual commander of the armed forces prior to 1975).

[1100] *See* Section 3: Historical Background, para. 98.

[1101] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 42, ERN (En) 00103744; T. 13 December 2011 (KHIEU Samphan) pp. 92-93. *See also*, Section 3: Historical Background, para. 98.

[1102] GRUNK Report: *Cambodia's Seat in the United Nations*, E3/28, 1973, ERN (En) 00068119. Section 14: Joint Criminal Enterprise, paras 731-734.

1970s.[1103] Together, they were known as the 'three ghosts' – a reference to rumours of their deaths which had circulated during their time in hiding.[1104]

366. From 1970 to 1975, KHIEU Samphan stayed in close proximity to POL Pot and NUON Chea, and the three of them frequently met, worked together and ate together.[1105]

367. In the early 1970s, KHIEU Samphan assisted with the preparation of FUNK propaganda materials and helped to conduct political training sessions.[1106] Between 1970 and 1975, the FUNK radio station broadcast appeals by KHIEU Samphan (sometimes made jointly with HU Nim and HOU Youn) exhorting the population to join or support the resistance movement against the LON Nol regime.[1107] One such appeal in January 1975 called on people to "overthrow and annilihate" and "turn [their] guns against" the "traitorous" LON Nol clique.[1108] Other speeches delivered by KHIEU Samphan demonstrated that he had knowledge of CPNLAF military operations.[1109]

[1103] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 11 July 2013 (Stephen HEDER), pp. 78-79; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393; Article by S. HEDER: *Pol Pot and Khieu Samphan*, E3/3169, 1991, p. 5, ERN (En) 00002750; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 3, ERN (En) 00223580; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 17, ERN (En) 00762420.

[1104] T. 9 April 2013 (François PONCHAUD), pp. 9-10; T. 20 July 2012 (David CHANDLER), p. 22; T. 17 July 2013 (Stephen HEDER), pp. 15-16.

[1105] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 11 June 2013 (SO Socheat), p. 73; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p 4; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 65-66; T. 11 December 2012 (PHAN Van), p. 55; T. 10 June 2013 (SO Socheat), p. 54; T. 13 June 2012 (OEUN Tan), p. 29; T. 23 April 2012 (SALOTH Ban), p. 53; T. 7 December 2011 (LONG Norin), pp. 75-76; THA Sot Interview Record, E3/464, 19 January 2008, p. 7, ERN (En) 00226112.

[1106] T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 93-94, 96-97; T. 21 August 2012 (KIM Vun), pp. 68-70; T. 22 August 2012 (KIM Vun), pp. 85-86.

[1107] *See e.g.* US Embassy Telegram, Subject: Cambodian Sitrep, E3/3292, 1 October 1970, p. 3, ERN (En) 00418909; US Embassy Telegram, Subject: Khmer Report, E3/3294, 8 November 1971, p. 4, ERN (En) 00418938; *Khieu Samphan Issues Appeal to Compatriots, Monks* (in FBIS Collection), E3/30, 27 January 1975, ERN (En) 00166721-22; *Khieu Samphan Appeals for Intensified Struggle* (in FBIS Collection), E3/120, 15 March 1975, ERN (En) 00166826-28; *Khieu Samphan Issues Statement on Current Situation* (in FBIS Collection), E3/118, 2 April 1975, ERN (En) 00166897-98.

[1108] *NUFC Committee Chairman Appeals to Phnom Penh Citizens* (in FBIS Collection), E3/488, 31 January 1975, ERN (En) 00166733-34.

[1109] *See e.g. Khieu Samphan Issues Appeal to Compatriots, Monks* (in FBIS Collection), E3/30, 27 January 1975, ERN (En) 00166721-22; *Khieu Samphan Appeals for Intensified Struggle* (in FBIS Collection), E3/120, 15 March 1975, ERN (En) 00166826-28.

368. KHIEU Samphan accompanied POL Pot and NUON Chea on tours of the countryside and CPK 'liberated' areas in 1971 and 1972.[1110] In 1973 he received NORODOM Sihanouk upon the latter's visit to Cambodia.[1111] The following year, he received a visiting delegation from the People's Revolutionary Government of the Republic of South Vietnam.[1112] With IENG Sary, KHIEU Samphan also led delegations on trips abroad, seeking support for the FUNK and recognition of the GRUNK.[1113]

369. In late 1972 or early 1973, KHIEU Samphan married SO Socheat, a cook at S-71.[1114] Their first child was born in 1974.[1115]

370. In February 1975, a FUNK press release announced that a FUNK "National Congress", purportedly held on 24 and 25 February and chaired by KHIEU Samphan, had decided that the "seven traitors" of the LON Nol regime had to be killed.[1116] Although the evidence before the Chamber did not establish conclusively that such a meeting ever actually took place, KHIEU Samphan referred to the 1975 Congress and the decisions allegedly reached there in a speech he delivered the following year.[1117]

[1110] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 49, ERN (En) 00103747; *Special Report*, E3/637, undated, ERN (En) 00740939.

[1111] T. 10 June 2013 (SO Socheat), pp. 60-61; Documentary by D. Aronowitsch and S. Lindberg: Facing Genocide - Khieu Samphan and Pol Pot, E109/2.3R, 2010, 00.20.25-00.21.07 (depicting KHIEU Samphan meeting NORODOM Sihanouk); Report by H. LOCARD: *Northeast – Eisan Region*, E3/3255, 14 June 2007, ERN (En) 00403206 (giving the date of NORODOM Sihanouk's visit as March 1993, but it is clear from the context that this is a typographical error and the correct date is March 1973); *Khieu Samphan Pleads Ignorance On Genocide* (Jean-Clau Pomonti, Le Monde), E3/4603, 24 January 2004, p. 4, ERN (En) 00716437. *See also*, T. 7 May 2013 (Philip SHORT), p. 81.

[1112] *PRGRS-NFLSV Delegation Visits 25-29 Dec* (in FBIS Collection), E3/30, 6 January 1975, ERN (En) 00166668-70.

[1113] T. 2 August 2012 (SUONG Sikoeun), pp. 87-90; T. 22 May 2013 (CHAU Sockon), p. 62; NOEM Sem Interview Record, E3/43, 18 July 2009, p. 7, ERN (En) 00365662; *AKI Hails DRV-RGNUC Relations, Friendship Associations* (in FBIS Collection), E3/488, 14 February 1975, ERN (En) 00166754; FUNK Press Release, E3/1242, 1-2 April 1974; FUNK Press Release, E3/113, 2-3 April 1974; U.S Embassy Telegram, Subject: Khieu Samphan's Visit, E3/3315, May 1974.

[1114] T. 10 June 2013 (SO Socheat), pp. 54, 59.

[1115] T. 10 June 2013 (SO Socheat), p. 62; T. 11 June 2013 (SO Socheat), pp. 3-4. Section 3: Historical Background, para. 139.

[1116] *Khieu Samphan Chairs NUFC Congress Session: Communique Issued* (in FBIS Collection), E3/488, 27 February 1975, ERN (En) 00166772-75. On the "seven traitors", *see* Section 3: Historical Background, para. 120, fn. 343.

[1117] T. 7 May 2013 (Philip SHORT), pp. 104-106 (doubting that the congress took place); *Khieu Samphan Report* (in FBIS Collection), E3/273, 5 January 1976, ERN (En) 00167811.

371. Shortly before the fall of Phnom Penh, KHIEU Samphan relocated to B-5 to "follow the last offensive against the capital more closely".[1118] As the CPK/FUNK/CPNLAF forces closed in on Phnom Penh, KHIEU Samphan continued to appeal to people to rise up against the LON Nol regime.[1119]

372. The Chamber is satisfied that KHIEU Samphan, who was highly-respected by the population, played an important role in winning support for the opposition movement between 1970 and 1975. His acceptance of key posts in FUNK, his role in reassuring the public about CPK's plans, his performance of diplomatic duties in his capacity as GRUNK Deputy Prime Minister, his role in liaising with NORODOM Sihanouk, his work in preparing and disseminating propaganda material and his calls for violent struggle against the LON Nol regime in publicly-broadcast speeches all served to bolster and give legitimacy to the CPK-dominated resistance movement.[1120]

8.2. Residence, Working and Travel Locations During the DK Period

373. In 1975, after his return to Phnom Penh, KHIEU Samphan stayed briefly with other CPK leaders at the city's railway station, before moving to the former Ministry of Finance building for approximately two weeks, and then the Silver Pagoda at the Royal Palace for a short time.[1121] He then spent several months living and working at K-1,[1122] before moving to K-3, again accompanied by some of the other senior CPK leaders.[1123] While living at K-3, he frequently visited K-1, where POL Pot continued

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[1118] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 3, ERN (En) 00156743; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 57-59; *See also*, Section 3: Historical Background, paras 144-147.

[1119] T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 66; *Khieu Samphan Appeals to Phnom Penh Citizens to Join NUFC 14 Apr* (in FBIS Collection), E3/118, 14 April 1975, ERN (En) 00166948-49

[1120] *See* T. 8 May 2013 (Philip SHORT), p. 35.

[1121] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 10 June 2013 (SO Socheat), pp. 64-66 (indicating that upon her return to Phnom Penh, she stayed first at the railway station, and then at the Silver Pagoda, but did not stay with KHIEU Samphan); ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582.

[1122] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755; T. 10 June 2013 (SO Socheat), pp. 66-68.

[1123] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 88; T. 17 June 2013 (LENG Chhoeung), pp. 9, 13-14; T. 7 June 2013 (SOK Roeu), p. 78; T. 13 June 2012 (OEUN Tan), pp. 40-41; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755; THA Sot Interview Record, E3/464, 19 January 2008, p. 6, ERN (En) 00226111; KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506; NORNG Sophang Interview Record, E3/67, 28 March 2009, p. 5, ERN (En) 00483967.

to reside.[1124] Witness SO Socheat claimed that POL Pot, NUON Chea, IENG Sary, SON Sen and VORN Vet also lived at K-3, but after staying there for four or five months they all left.[1125] However, other witnesses who recalled seeing KHIEU Samphan living with the senior leaders at K-3 made no mention of this purported departure, and the Chamber did not find the testimony of Witness SO Socheat, KHIEU Samphan's wife, to be convincing.[1126] Moreover, in an interview given in 2007, KHIEU Samphan himself stated that he was "always living in close quarters with the Cambodian leaders".[1127]

374. KHIEU Samphan travelled to China and North Korea on an official visit in 1975, the purpose of which was (at least partly) to discuss the terms of NORODOM Sihanouk's return to Phnom Penh.[1128] In 1976, KHIEU Samphan represented DK at a summit of the Non-Aligned Countries in Sri Lanka.[1129] He also travelled into the Cambodian countryside to visit worksites during the DK era.[1130]

8.3. Roles During the DK Period

375. KHIEU Samphan occupied a number of official posts during the DK period. According to the Closing Order, he served as President of the State Presidium, was a leading member of Office 870, had responsibility for commerce, and (in the GRUNK period) held the titles of Deputy Prime Minister, Minister of National Defence and

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[1124] T. 8 January 2013 (SA Vi), pp. 12, 85; T. 17 June 2013 (LENG Chhoeung), pp. 18, 97; T. 13 June 2012 (OEUN Tan), pp. 40-41, 43-45. *See also,* Section 5: Administrative Structures, para. 213.
[1125] T. 10 June 2013 (SO Socheat), pp. 74-75.
[1126] *See e.g.* T. 2 May 2012 (PEAN Khean), p. 48 (stating that K-3 was a joint office where POL Pot, KHIEU Samphan, IENG Sary and SON Sen worked); T. 17 June 2013 (LENG Chhoeung), pp. 13-14 (inidicating that KHIEU Samphan, NUON Chea and IENG Sary had houses at K-3); T. 13 June 2012 (OEUN Tan), pp. 40-41 (stating that KHIEU Samphan and NUON Chea stayed at K-3 while POL Pot lived at K-1); T. 6 May 2013 (Philip SHORT), p. 77 (suggesting that KHIEU Samphan, VORN Vet and NUON Chea lived together in the "bank buildings" near the river); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506 (giving K-3 as the name of KHIEU Samphan and NUON Chea's office). Witness SO Socheat's testimony contained a number of internal inconsistencies and evasive answers to questions, which in the Chamber's view diminished her overall credibility. Section 3: Historical Background, para. 139.
[1127] KHIEU Samphan Interview by France Culture, E289.1.1, August 2007, p. 3, ERN (En) 00923077.
[1128] U.S. State Department Telegram, Subject: Khieu Samphan leaves for North Korea, E3/3350, August 1975, p. 1, ERN (En) 00413736; *China's Symbolic Support of Prince Sihanouk* (The Times), E3/3727, 28 August 1975; Book by N. CHANDA: *Brother Enemy: The War After the War*, E3/2376, p. 42, ERN (En) 00192227; Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 329, ERN (En) 00396537. Section 14: Joint Criminal Enterprise, paras 756-762.
[1129] *See* Section 8: Roles and Functions – Khieu Samphan, fn. 1154.
[1130] *See* Section 8: Roles and Functions – Khieu Samphan, fn. 1144.

CPNLAF Commander-in-Chief.[1131] The Closing Order also alleges that KHIEU Samphan was a member of the CPK Central Committee and attended and participated in numerous meetings of the Standing Committee.[1132]

8.3.1. *Deputy Prime Minister, Minister of National Defence and Commander-in- Chief*

376. After the fall of Phnom Penh in April 1975, NORODOM Sihanouk's GRUNK formally took power in Cambodia, though Sihanouk himself did not return to the country until September 1975.[1133] KHIEU Samphan retained his roles as Deputy Prime Minister, Minister of National Defence and CPNLAF Commander-in-Chief,[1134] and as such continued to exercise certain diplomatic functions, such as meeting visiting delegations from foreign countries and leading Cambodian delegations on trips abroad.[1135] He continued to make public statements supporting the CPNLAF and the new regime; denouncing the previous LON Nol government; and encouraging all Cambodians to work hard to rebuild the country.[1136]

377. Public radio reports claimed that KHIEU Samphan also chaired a "Special National Congress" from 25 to 27 April 1975; like the purported FUNK Congress in February 1975, it was not clear to the Chamber whether the April 1975 meeting genuinely took place, but it was widely reported in the international press.[1137] A third National Congress was allegedly convened in December 1975, following which

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[1131] Closing Order, paras 1135-1146.
[1132] Closing Order, paras 1131-1134.
[1133] *Reception for Sihanouk: Speeches by Khieu Samphan and Sihanouk* (in SWB/FE/5006/B collection), E3/711, 11 September 1975, ERN (En) S 00003732-S 00003732; *See also,* Section 5: Administrative Structures, para. 231.
[1134] *'Special National Congress' Retains Sihanouk, Penn Nouth* (in FBIS Collection), E3/118, 28 April 1975, ERN (En) 00167012-13; NORODOM Sihanouk Telegram, E3/1106, 17 May 1975.
[1135] *See e.g. Meeting With Sihanouk* (in FBIS Collection), E3/274, 9 March 1976, ERN (En) 00167955; *Khieu Samphan Delegation Leaves for PRC* (in FBIS Collection), E3/119, 15 August 1975, ERN (En) 00167391; U.S. State Department Telegram, Subject: KHIEU Samphan Visit to PRC, E3/619, August 1975; *Sihanouk, Samphan, Kim Il-Song Meeting Described* (in FBIS Collection), E3/119, 21 August 1975, ERN (En) 00167402.
[1136] *See e.g. Khieu Samphan 21 Apr. Victory Message on Phnom Penh Radio* (in FBIS Collection), E3/118, 22 April 1975, ERN (En) 00166994-96; PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 6, ERN (En) 00223338 ; KOAM Kek Interview Record, E3/433, 14 August 2009, p. 3, ERN (En) 00365533; *Khieu Samphan Report* (in FBIS Collection), E3/273, 6 January 1976, ERN (En) 00167810-11, *See also,* T. 20 September 2012 (CHEA Say), p. 39.
[1137] *'Special National Congress' Retains Sihanouk, Penn Nouth* (in FBIS Collection), E3/118, 28 April 1975, ERN (En) 00167012. *See e.g. Cambodia Holds Special Congress* (The Guardian), E3/3722, 21 May 1975; *Long March from Phnom Penh* (Time), E3/4430, 19 May 1975, p. 3, ERN (En) 00445392.

KHIEU Samphan announced the adoption of a new draft constitution for Cambodia.[1138]

378. The Chamber is unable to say whether KHIEU Samphan retained the title of Commander-in-Chief when the CPNLAF was reformed into the RAK in July 1975.[1139] In any event, the Chamber is satisfied that KHIEU Samphan never had direct military responsibilities.[1140] He did, however, attend meetings with other CPK/DK senior leaders and military commanders or Zone or Sector-level officials at which military matters were discussed.[1141]

379. As well as making speeches, KHIEU Samphan played a role in the re-education of those returning to Cambodia from overseas, conducting at least one political study session with returnees in 1975.[1142] A number of witnesses who testified before the Chamber reported attending large-scale political training sessions during the DK period at which KHIEU Samphan lectured or taught.[1143]

380. In early 1976, KHIEU Samphan accompanied NORODOM Sihanouk on a tour of the Cambodian countryside, during which they visited worksites and witnessed thousands of labourers working on agricultural projects.[1144]

[1138] *National Congress Held; New Constitution Adopted* (in FBIS Collection), E3/1356, 15 December 1975, ERN (En) 00167574-75.

[1139] *See* Section 5: Administrative Structures, paras 240-244.

[1140] T. 6 May 2013 (Philip SHORT), p. 71; T. 23 April 2013 (CHHOUK Rin), p. 88; T. 5 September 2012 (NORNG Sophang), pp. 27-29; T. 4 June 2013 (KHIEU Samphan), p. 25; KAING Guek Eav Interview Record, E3/452, 23 August 2007, pp. 2-3, ERN (En) 00147564-65 (indicating that KHIEU Samphan did not have authority over S-21); T. 10 January 2013 (UNG Ren), pp. 43, 86 (stating that SON Sen and POL Pot were in charge of the military); KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089 (stating that reports on "matters other than security" were sent to KHIEU Samphan). *See also*, Section 8: Roles and Functions – Khieu Samphan, para. 365.

[1141] T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 64-65, 67-68; T. 7 June 2012 (SAO Sarun), pp. 55-58; T. 11 June 2012 (SAO Sarun), pp. 6-7.

[1142] T. 7 August 2012 (ONG Thong Hoeung), p. 99; T. 7 May 2013 (Philip SHORT), pp. 17-19 (citing Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004); Book by B. KIERNAN: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, pp. 148-149, ERN (En) 00678569.

[1143] T. 23 August 2012 (EM Oeun), pp. 79-85, 86-87; T. 27 August 2012 (EM Oeun), pp. 26-28; T. 3 July 2013 (EK Hen), pp. 40-48, 63, 78-82, 87-89, 90-98; T. 20 September 2012 (CHEA Say), pp. 32-37, 71; T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 75-77; T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 95-96; T. 6 May 2013 (Philip SHORT), pp. 74-75.

[1144] *Sihanouk Completes 3-Day Tour of North* (in FBIS Collection), E3/273, 21 January 1976, ERN (En) 00167844; KHIEU Samphan Interview by France Culture, E289.1.1, August 2007, p. 4, ERN (En) 00923078 (stating that he visited the countryside with NORODOM Sihanouk, but "did not see people reduced to a skeletal state", only "people who looked more or less normal, just like peasants at work");

8.3.2. *President of the State Presidium*

381. In April 1976, NORODOM Sihanouk and all members of the GRUNK resigned to make way for the new government established by the DK Constitution.[1145] Instead of a monarchy, the DK Constitution provided for a State Presidium to represent the State of DK at home and overseas.[1146] The State Presidium comprised a President, First Vice-President and Second Vice-President; although in principle these posts were to be elected by the PRA, in reality KHIEU Samphan was chosen to be President by the CPK Central Committee before the PRA was ever convened.[1147] His appointment was formally confirmed at the PRA's inaugural session.[1148] Constitutionally, the President had no executive power; as head of state, KHIEU Samphan's role was largely symbolic.[1149]

382. As President of the State Presidium, KHIEU Samphan continued to perform diplomatic and ceremonial functions: for example, receiving letters of credentials from diplomats,[1150] welcoming foreign delegations,[1151] hosting and attending State

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THA Sot Interview Record, E3/464, 19 January 2008, p. 5, ERN (En) 00226110; Book by N. CHANDA: *Brother Enemy: The War After the War*, E3/2376, p. 228, ERN (En) 00192413.

[1145] *See* Section 5: Administrative Structures, para. 236.

[1146] DK Constitution, E3/259, undated, p. 4, Chapter 8, ERN (En) 00184836.

[1147] DK Constitution, E3/259, undated, p. 4, Chapter 8, ERN (En) 00184836; Central Committee Decision, E3/12, 30 March 1976, p. 5, ERN (En) 00182813. *See also*, Section 5: Administrative Structures . The other members of the State Presidium were SAO Phim (First Vice-President) and ROS Nhim (Second Vice-President): *see* Section 5: Administrative Structures, paras 219, 235, fns 692, 693.

[1148] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976. *See also*, Section 5: Administrative Structures, paras 235-236. SAO Phim was appointed First Vice-President and ROS Nhim Second Vice-President: DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068.

[1149] T. 24 July 2012 (David CHANDLER), p. 134; T. 9 May 2013 (Philip SHORT), pp. 133-134; T. 27 March 2012 (KAING Guek Eav), p. 66; T. 8 August 2012 (SUONG Sikoeun), pp. 43-44; KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 9-10, ERN (En) 00156749-50; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756; SALOT Ban Interview Record, E3/446, 7 April 2010, ERN (En) 00503164.

[1150] T. 17 June 2013 (LENG Chhoeung), pp. 22, 89-92; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 71, ERN (En) 00103758; *Khieu Samphan Pleads Ignorance On Genocide* (Jean-Clau Pomonti, Le Monde), E3/4603, 24 January 2004, p. 4, ERN (En) 00716437; *PRC Ambassador Presents Credentials* (in FBIS Collection), E3/276, 12 May 1976, ERN (En) 00168011; *Khieu Samphan Receives Foreign Ambassadors* (in FBIS Collection), E3/277, 14 June 1976, ERN (En) 00167900; French Ministry of Foreign Affairs Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 26 January 1978, p. 1, ERN (En) 00389174.

[1151] KIM Vun Interview Record, E3/380, 25 July 2009, p. 7, ERN (En) 00365646; *Khieu Samphan Receives Visiting Lao Women's Delegation* (in FBIS Collection), E3/286, 29 April 1977, ERN (En) 00168252; *Burmese Delegation Meets Khieu Samphan* (in FBIS Collection), E3/143, 2 September 1977, ERN (En) 00168726-27.

receptions,[1152] sending and receiving diplomatic messages on behalf of the DK regime[1153] and leading DK delegations on trips abroad.[1154]

383. As President, KHIEU Samphan also continued to make speeches, praising the Cambodian people and revolutionary army for their role in the 'liberation' of Phnom Penh;[1155] supporting the creation of the new DK state and its institutions;[1156] endorsing the CPK's policies, such as the use of co-operatives, food rationing, child labour and worksites;[1157] celebrating purported achievements in nation-building and improvements in living conditions;[1158] and decrying Vietnamese 'aggression'.[1159] KHIEU Samphan told the Co-Investigating Judges that the content of his speeches was "dictated" by POL Pot and that, although he generally agreed with what he said, privately he disagreed with some of the specifics, such as the material on the abolition of the currency.[1160]

8.3.3. *Membership of the Central and Standing Committees*

384. KHIEU Samphan became a full-rights member of the CPK Central Committee in 1976, having been a candidate member since 1971.[1161] Although he has alleged that the Central Committee was not an "executive organisation" and merely discussed the

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[1152] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 71, ERN (En) 00103758; *Khieu Samphan Hosts Banquet* (in FBIS Collection), E3/291, 28 November 1977, ERN (En) 00168593-94; *Ne Win's Visit to Cambodia* (in SWB Collection), E3/298, 28 November 1977, ERN (En) S 00008307-08; *President of Laos in Cambodia* (in SWB Collection), E3/301, 23 December 1977, ERN (En) S 00008362.

[1153] *PRGRSV Officials Greeted on 30 April Victory* (in FBIS Collection), E3/276, 5 May 1976, ERN (En) 00168008-09; *Further National Day Greetings from Foreign Leaders* (in FBIS Collection), E3/286, 25 April 1977, ERN (En) 00168236; *Khieu Samphan Greets Libya's Al-Qadhdhafi on National Day* (in FBIS Collection), E3/143, 31 August 1977, ERN (En) 00168724.

[1154] T. 6 August 2012 (SUONG Sikoeun), p. 74; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757.

[1155] *Anniversary of 17 Apr. Victory Celebrated* (in FBIS Collection), E3/275, 15 April 1976, ERN (En) 00167630-32.

[1156] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, ERN (En) 00184052-56.

[1157] *Khieu Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/201, 15 April 1977, ERN (En) 00419512-18.

[1158] *Anniversary of 17 Apr. Victory Celebrated* (in FBIS Collection), E3/275, 15 April 1976, ERN (En) 00167634; *Khieu Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/201, 15 April 1977, ERN (En) 00419513-17.

[1159] *Khieu Samphan Statement* (in FBIS Collection), E3/1359, 30 December 1977, ERN (En) 00169517-25. *See also*, LENG Chhoeung Interview Record, E3/385, 17 July 2009, p. 6, ERN (En) 00360130.

[1160] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757.

[1161] *See* Section 8: Roles and Functions – Khieu Samphan, para. 363.

implementation of Standing Committee policies, he has also claimed that the Central Committee issued directives intended to correct "abuses" and improve conditions in the countryside.[1162]

385. KHIEU Samphan was never formally a member of the CPK Standing Committee.[1163] He has admitted that he attended what he described as "open" or "expanded" meetings of the Standing Committee, but has consistently asserted that he did not voice opinions or participate in decision-making during those meetings.[1164] The Co-Prosecutors allege that KHIEU Samphan was a *de facto* member of the Standing Committee and that his attendance of its meetings placed him within a small group of powerful and fully-informed members of the Party Centre.[1165]

386. Twenty-three sets of Standing Committee meeting minutes were put before the Chamber. Of these, 19 contain lists of those attending the meetings, and 16 record 'Comrade Hem' (KHIEU Samphan) as being present.[1166] The minutes in evidence cover the period from August 1975 to June 1976, but do not necessarily represent all of the Standing Committee meetings held in that period, or during the DK era generally.[1167] The Chamber infers from KHIEU Samphan's regular attendance of Standing Committee meetings in the 1975-1976 period that he continued to attend Standing Committee meetings on a similarly regular basis thereafter. This is consistent with the evidence of his repeated visits to K-1[1168] – where at least some of

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[1162] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 58-59, ERN (En) 00103752.

[1163] T. 8 May 2013 (Philip SHORT), p. 2; T. 6 May 2013 (Philip SHORT), p. 70; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 7-8; T. 10 April 2012 (KAING Guek Eav), p. 50; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; SALOT Ban Interview Record, E3/446, 7 April 2010, p. 5, ERN (En) 00153164.

[1164] T. 29 May 2013 (KHIEU Samphan), pp. 87-88; Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 5, ERN (En) 00153270; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 3, ERN (En) 00170883; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; *Khieu Samphan Pleads Ignorance On Genocide* (Le Monde), E3/4603, 24 January 2004, p. 5, ERN (En) 00716438; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 63, ERN (En) 00103754.

[1165] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 361, 527, 537-541.

[1166] *See* Section 5: Administrative Structures, para. 203, fn. 624.

[1167] T. 24 July 2012 (David CHANDLER), p. 25. *See also*, Section 5: Administrative Structures, para. 203, fn. 624; Section 6: Communication Structure, para. 271.

[1168] T. 8 January 2013 (SA Vi), pp. 12, 21 (testifying that KHIEU Samphan, IENG Sary and NUON Chea came to K-1 "very often" between 1976 and 1979); T. 17 June 2013 (LENG Chhoeung), p. 18 (stating that he drove KHIEU Samphan to K-1 "occasionally"); LENG Chhoeung Interview Record, E3/385, 17 July 2009, p. 5, ERN (En) 00360129 (indicating that he drove KHIEU Samphan to K-1 two

the meetings of the Standing Committee were held[1169] – and with his own admission that POL Pot "trusted" him.[1170]

387. The surviving minutes demonstrate that, despite his insistence to the contrary, KHIEU Samphan actively participated in some Standing Committee meetings. Although the minutes do not always attribute remarks to individual speakers, they prove that KHIEU Samphan contributed on at least two occasions, reporting to the Committee on relations with NORODOM Sihanouk and on the 'election' of 20 March 1976.[1171]

388. Moreover, despite repeatedly claiming that he was not kept well-informed during the DK era,[1172] and despite specifically denying knowledge of arrests,[1173] KHIEU Samphan was present at Standing Committee meetings during which arrests,[1174] propaganda,[1175] living conditions in the countryside (including illnesses, deaths and food shortages),[1176] child labour,[1177] foreign affairs,[1178] national defence,[1179] armed conflict with Vietnam[1180] and commerce[1181] were discussed.

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or three times per week); T. 13 June 2012 (OEUN Tan), pp. 41, 42, 53 (stating that KHIEU Samphan attended meetings at K-1 "regularly", approximately once a month or once a fortnight); T. 10 June 2013 (SO Socheat), p. 76 (stating that KHIEU Samphan went to K-1 "occasionally").

[1169] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755.

[1170] KHIEU Samphan Interview by France Culture, E289.1.1, August 2007, p. 3, ERN (En) 00923077.

[1171] Standing Committee Minutes, E3/197, 11-13 March 1976, pp. 1, 4, ERN (En) 00182638, 00182641 (discussing NORODOM Sihanouk's desire to resign, and possible responses); Standing Committee Minutes, E3/232, 8 March 1976, p. 1, ERN (En) 00182628 (discussing the principles, objectives and methods of the forthcoming 'election' and methods of education and propaganda).

[1172] T. 29 May 2013 (KHIEU Samphan), pp. 87-88; KHIEU Samphan Interview by France Culture, E289.1.1, August 2007, pp. 3, 5, ERN (En) 00923077, 00923079; *Khieu Samphan Pleads Ignorance On Genocide* (Jean-Clau Pomonti, Le Monde), E3/4603, 24 January 2004, p. 4, ERN (En) 00716437.

[1173] T. 29 May 2013 (KHIEU Samphan), p. 88; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 128, 141, ERN (En) 00103787, 00103793.

[1174] Standing Committee Minutes, E3/232, 8 March 1976, pp. 3, 4, ERN (En) 00182630, 00182631.

[1175] Standing Committee Minutes, E3/231, 8 March 1976.

[1176] Standing Committee Minutes, E3/232, 8 March 1976, pp. 3, 4, 6, ERN (En) 00182630, 00182631, 00182633.

[1177] Standing Committee Minutes, E3/226, 10 June 1976, pp. 2, 5, ERN (En) 00183364, 00183367; Standing Committee Minutes, E3/230, 22 February 1976, p. 2, ERN (En) 00182547.

[1178] Standing Committee Minutes, E3/219, 3 May 1976; Standing Committee Minutes, E3/223, 17 May 1976.

[1179] Standing Committee Minutes, E3/229, 22 February 1976; Standing Committee Minutes, E3/224, 30 May 1976, p. 1, ERN (En) 00182667.

[1180] Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-4, 7, ERN (En) 00182651-00182653, 00182657.

[1181] Standing Committee Minutes, E3/233, 13 March 1976; Standing Committee Minutes, E3/220, 7 May 1976.

389. Further demonstrating his level of awareness, KHIEU Samphan has admitted that he attributed the disappearance of friends and colleagues during the DK era to POL Pot but "kept on hoping that POL Pot would backtrack one day."[1182] He has also admitted that in mid-1978 he learned of "arrests and barbarous acts" in Preah Vihear, and specifically of the arrest and ill-treatment of his wife's siblings.[1183] Consistently with this, Witness MEAS Voeun – a military officer who went to the new North Zone in 1978[1184] – testified that KHIEU Samphan sent him a telegram in 1978 asking about the welfare of his relatives, and ordering that they be sent to Phnom Penh if they were facing hardship.[1185] As a result, Witness MEAS Voeun made enquiries, and helped to secure the release of KHIEU Samphan's sister-in-law from a security centre in Siem Reap where she had been detained.[1186] While Witness KAING Guek Eav suggested that KANG Chap, the Secretary of the new North Zone, was punished by POL Pot for his role in this incident,[1187] in a letter written to national newspapers in 2001, KHIEU Samphan appeared to acknowledge that the detention of his relatives had led to the arrest of certain "regional party secretaries".[1188]

8.3.4. ***Membership of Office 870***

390. Office 870, which oversaw the implementation of Standing Committee decisions, comprised two members: SUA Vasi *alias* Doeun, who was appointed chairman of the Office in October 1975, and KHIEU Samphan, who joined at around the same time.[1189] S-71, headed by CHIMM Sam Aok *alias* Pang, may have been a subordinate office of Office 870; the precise relationship was unclear.[1190]

[1182] KHIEU Samphan Interview by France Culture, E289.1.1, August 2007, p. 3, ERN (En) 00923077.
[1183] KHIEU Samphan Letter to "All My Compatriots", E3/205, 16 August 2001, p. 3, ERN (En) 00149526.
[1184] T. 4 October 2012 (MEAS Voeun), p. 70.
[1185] T. 4 October 2012 (MEAS Voeun), pp. 73-75.
[1186] T. 4 October 2012 (MEAS Voeun), pp. 75-76.
[1187] T. 5 April 2012 (KAING Guek Eav), p. 107. *See also,* Section 5: Administrative Structures, para. 220.
[1188] KHIEU Samphan Letter to "All My Compatriots", E3/205, 16 August 2001, p. 3, ERN (En) 00149526.
[1189] Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, ERN (En) 00103755-00103756. *See also,* Section 5: Administrative Structures, paras 207-210.
[1190] *See* Section 5: Administrative Structures, paras 211-212.

391. The Co-Prosecutors allege that KHIEU Samphan succeeded Doeun as the head of Office 870 in 1976 or 1977.[1191] KHIEU Samphan has consistently denied that he ever served as the chairman of Office 870, and has claimed that he was responsible only for maintaining relations with NORODOM Sihanouk; setting the price scales for products from the co-operatives and other economic units; implementing Standing Committee decisions regarding the distribution of products to the Zones; and working with the Khmer Company for Foreign Trade ('FORTRA') on imports.[1192] In reality, as KHIEU Samphan has admitted, there was no exchange of merchandise between co-operatives, so his responsibility for the setting of prices was only ever theoretical.[1193]

392. KHIEU Samphan has claimed to be unaware of Doeun's precise role as chairman of Office 870, though he has acknowledged that Doeun received reports from the Zones and was "in charge of political affairs".[1194] Doeun was arrested and taken to S-21 in February 1977.[1195] Office 870 nevertheless continued to function until at least 1978: KHIEU Samphan has stated that he worked in Office 870 until 1978, and telegrams addressed to 'M-870' or copied to 'Office' were sent throughout 1977 and 1978.[1196]

[1191] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 557-558.

[1192] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, ERN (En) 00103755-56; KHIEU Samphan Interview Record, E3/37, 14 December 2007, pp. 3, 5, ERN (En) 00156754, 00156756; Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview by VOA Khmer, E3/204, 14 November 2007, pp. 1-2, ERN (En) 00680033-34; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882; *See also*, FORTRA Invoice, E3/2056, 2 January 1978, ERN (En) 00072603 (giving the full name of FORTRA).

[1193] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882

[1194] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; KHIEU Samphan SOAS/HRW Interview, E3/198, 17 August 2005, p. 1, ERN (En) 00184680; Book by KHIEU S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 61, fn 193, ERN (En) 00498280.

[1195] Revised S-21 Prisoner List, E3/342, 19 May 2009, p. 416, ERN (En) 00330011; S-21 Confession – SUA Vasi *alias* Doeun, E3/1625, 4 April 1977.

[1196] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 66, ERN (En) 00103756. *See e.g.* DK Telegram, E3/1200, 8 May 1977; DK Telegram, E3/890, 28 October 1977; DK Telegram, E3/902, 14 December 1977; DK Telegram, E3/908, 24 December 1977; DK Telegram, E3/916, 1 January 1978; DK Telegram, E3/913, 16 January 1978; DK Telegram, E3/932, 13 April 1978; DK Telegram, E3/247, 29 April 1978.

393. KHIEU Samphan has speculated that Pang may have succeeded Doeun as chairman of Office 870; however, he has described this as a mere "presumption".[1197] Witnesses SALOTH Ban and PHY Phuon (both of whom worked at the Ministry of Foreign Affairs during the DK period) testified that Pang was the head of Office 870, but the dates they gave for Pang's purported chairmanship contradicted Standing Committee meeting minutes showing that Doeun was in charge of Office 870 in 1975.[1198] Other witnesses also described Pang as the head of Office 870, but without making reference to Doeun, leading the Chamber to conclude that they were confusing Office 870 with Office S-71.[1199] The Chamber is not convinced that Pang ever served as chairman of Office 870.

394. A number of other witnesses and experts who appeared before the Trial Chamber testified that it was KHIEU Samphan who replaced Doeun as head of Office 870.

395. PHY Phuon claimed that KHIEU Samphan took charge of Office 870 after Doeun's arrest although, as outlined above, his understanding of the sequence of events conflicted with documentary evidence before the Chamber.[1200] PHY Phuon's contact with KHIEU Samphan mainly concerned the reception of guests and his understanding of KHIEU Samphan's position within Office 870 was based on hearsay.[1201]

[1197] KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 2, ERN (En) 00156753; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 154, ERN (En) 00103800.

[1198] Witness SALOTH Ban stated that Pang was in charge of Office 870 from 1975 or earlier: T. 26 April 2012 (SALOTH Ban), pp. 6-7, 10. Witness ROCHOEM Ton stated that Pang was in charge of Office 870 until his disappearance, at which time Doeun took over: T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 92. However, Standing Committee meeting minutes show that Doeun was in charge of Office 870 in 1975: Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393. Moreover, by the time Pang disappeared in mid-1978, Doeun had already been arrested and sent to S-21: *see* Section 5: Administrative Structures, para.214.

[1199] *See e.g.* T. 3 May 2012 (PEAN Khean), p. 22; T. 25 September 2012 (NOEM Sem), p. 42. *See also,* Section 5: Administrative Structures, para. 212.

[1200] *See e.g.*, Section 3: Historical Background, para. 107.

[1201] T. 2 August 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 54; T. 26 July 2013 (ROCHOEM Ton *alias* PHY Phuon), p. 94 (stating that he learned that KHIEU Samphan had replaced Doeun from IENG Sary); T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), p. 80 ("the public at large knew about [KHIEU Samphan] and they said that when Doeun disappear *(sic)* he was in charge of Office 870.")

396. In his testimony before the Chamber, Witness KAING Guek Eav referred to the office chaired by Doeun as the "Central Office".[1202] However, in previous interviews with the Co-Investigating Judges, he called the same entity "Office 870".[1203] He alleged that KHIEU Samphan had a more senior role in Office 870 than Doeun, which he retained after Doeun's departure.[1204] KAING Guek Eav has admitted that he knew little about the work of Office 870,[1205] and his statements about KHIEU Samphan's position within the Office seemed to be inferences drawn from KHIEU Samphan's general seniority in the DK period,[1206] academic texts[1207] and hearsay.[1208]

397. Two interviews conducted by Witness Stephen HEDER suggested that KHIEU Samphan became chairman of Office 870 after Doeun. The first was an interview with VAN Rith, Minister of Commerce during the DK period, who is now deceased.[1209] Although Stephen HEDER – whom the Chamber found to be generally credible – testified as to the circumstances in which the interview was conducted, the Chamber has been unable to accord his notes of the interview significant probative value.[1210]

[1202] T. 28 March 2012 (KAING Guek Eav), p. 98; T. 2 April 2012 (KAING Guek Eav), p. 9.

[1203] *See e.g.* KAING Guek Eav Interview Record, E3/107, 24 June 2008, p. 8, ERN (En) 00198224; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882; KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874.

[1204] T. 28 March 2012 (KAING Guek Eav), p. 99; T. 2 April 2012 (KAING Guek Eav), pp. 10-11, 13; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882.

[1205] KAING Guek Eav Written Answers, E3/15, 21 October 2008, ERN (En) 00251376.

[1206] T. 2 April 2012 (KAING Guek Eav), p. 10-11 (suggesting that Doeun could not have been the head of Office 870 because he was "junior", "young" and "inferior" to KHIEU Samphan); KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882 (referring to KHIEU Samphan's role in the State Presidium while discussing Office 870).

[1207] *See e.g.* KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882 (referring to the work of author David Chandler); KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874 (referring to a book by David Chandler).

[1208] *See e.g.* KAING Guek Eav Interview Record, E3/107, 24 June 2008 p. 8, ERN (En) 00198224 ("I was told that [KHIEU Samphan] had been appointed head of Office 870."); KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 6, ERN (En) 00154911.(suggesting that he heard about KHIEU Samphan's role from Pang).

[1209] VAN Rith Interview by Stephen HEDER, E3/5699. 21 March 2004, p. 1, ERN (En) 00567469.

[1210] T. 15 July 2013 (Stephen HEDER), p. 7. The Chamber has previously set out its position on the admissibility and probative value of written statements of deceased persons: *see* Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, para. 29. In relation to E3/5699, the Chamber has taken into account the fact that no full transcription or recording of the interview was available, the summary of the interview was not signed by VAN Rith, and the interview was conducted informally.

The second was an interview with IENG Sary.[1211] However, as no full or formal record of the interview was made and IENG Sary subsequently denied having stated that KHIEU Samphan was appointed chief of Office 870, the summaries of the interview on the Case File cannot be given significant weight in this respect.[1212]

398. In the course of their historical research, neither Expert Philip SHORT nor Expert David CHANDLER came across any document confirming that KHIEU Samphan replaced Doeun as the head of Office 870.[1213] No such document was put before the Chamber. However, Philip SHORT told the Chamber that, based on the materials he had seen, it was "reasonable to assume" that KHIEU Samphan "had an important role" in the Office after Doeun's departure.[1214] David CHANDLER also assumed that KHIEU Samphan replaced Doeun after the latter's arrest.[1215]

399. Having considered the evidence, the Chamber is not satisfied that KHIEU Samphan ever served as the chairman of Office 870. The Chamber is therefore unable to say whether KHIEU Samphan saw all of the telegrams and documents passing through or copied to Office 870, in particular all of those which did not concern his specific areas of policy responsibility.

8.3.5. *Oversight of the Commerce Committee (Ministry of Commerce)*

400. In October 1975, the CPK Standing Committee assigned KHIEU Samphan responsibility for "the Front and the Royal Government, and Commerce for accounting and pricing".[1216] KOY Thuon *alias* Thuch was given responsibility for "domestic and international commerce" and VORN Vet for "Industry, Railroads and Fisheries".[1217] In March 1976, the Standing Committee appointed KHIEU Samphan to a committee charged with "mak[ing] examinations and preparation of merchandise

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[1211] IENG Sary Interview by Stephen HEDER E3/190, 4 January 1999, ERN (En) 00081572; IENG Sary Interview Notes by Stephen HEDER, E3/573, 4 January 1999, ERN (En) 00427599; *See also*, T. 15 July 2013 (Stephen HEDER), p. 4.
[1212] IENG Sary Declaration, E3/515, 1 September 2009.
[1213] T. 8 May 2013 (Philip SHORT), p. 27; T. 18 July 2012 (David CHANDLER), p. 100.
[1214] T. 8 May 2013 (Philip SHORT), pp. 27-28; T. 9 May 2013 (Philip SHORT), p. 97.
[1215] T. 18 July 2012 (David CHANDLER), pp. 108-109, 120. It is possible that Expert David CHANDLER based this assumption on research conducted by Witness Stephen HEDER: *see* Book by D. CHANDLER: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, pp. 64, 182, ERN (En) 00192743, 00192875.
[1216] Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393.
[1217] *See also*, Section 5: Administrative Structures, para. 232.

which must be purchased"; the other members of the committee were KOY Thuon (chairman), IENG Sary, VORN Vet and SUA Vasi *alias* Doeun.[1218] At the same time, KHIEU Samphan was made chairman of a committee created to examine banking matters; the other members were KOY Thuon, IENG Sary and Doeun.[1219]

401. The hierarchy of responsibility for economic and commercial matters during the DK period was complicated by frequent arrests within the upper echelon of the CPK. The evidence before the Chamber has nevertheless enabled it to discern an approximate sequence of events.

402. After the Khmer Rouge seized power, the first person to take charge of the economy was KOY Thuon. He was arrested in April 1976 and taken to S-21 in 1977.[1220]

403. Around the time of KOY Thuon's arrest, the DK PRA confirmed VORN Vet as the Deputy Prime Minister responsible for economics, with six committees under his authority, including the Commerce Committee.[1221] The Commerce Committee (also known as the Ministry of Commerce[1222]) was responsible for the storage, import and export of goods during the DK era. Its operations included state warehouses, where goods from the Zones were stored and prepared for export;[1223] the Kampong

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[1218] Standing Committee Minutes, E3/233, 13 March 1976, p. 1, ERN (En) 00182649. 'Comrade Touch' was also appointed to the Committee as "recording member" – presumably minute-taker.

[1219] Standing Committee Minutes, E3/233, 13 March 1976, p. 2, ERN (En) 00182650. Again, 'Comrade Touch' was appointed as "recording member".

[1220] T. 2 May 2012 (PEAN Khean), p. 68; T. 12 June 2013 (SIM Hao), p. 68; S-21 Confession – KOY Thuon *alias* Thuch, E3/1604, 3 March 1977; YIN Eng Interview Record, E3/473, 5 March 2008, p. 4, ERN (En) 00223342 ; Book by E. BECKER: *When the War was Over*, E3/20, 1986, pp. 181, 217, 265, ERN (En) 00237886, 00237922, 00237970; Book by D. CHANDLER: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, pp. 47, 61, ERN (En) 00192726, 00192740.

[1221] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 22, ERN (En) 00184069; T. 31 May 2012 (SAR Kimlomouth), pp. 16-17.

[1222] T. 31 May 2012 (SAR Kimlomouth), p. 15.

[1223] T. 12 June 2013 (SIM Hao), pp. 85, 97; SIM Hao Interview Record, E3/472, 5 March 2008, p. 3, ERN (En) 00205031; YEN Kuch Interview Record, E3/437, 2 September 2009, pp. 2-3, ERN (En) 00375484-85; SUON Ri DC-Cam Interview, E3/4624, 2 February 2003, p. 29, ERN (En) 00699078; PET Na DC-Cam Interview, E3/5647, 20 October 2004, p. 36, ERN (En) 00640171. Though formally the state warehouses in Phnom Penh were run by a committee headed by 'Comrade Roeung', they appeared to be under the authority of the Commerce Committee: T. 25 April 2013 (RUOS Suy), pp. 24, 66; Standing Committee Minutes, E3/235, 19-21 April 1976, p. 2, ERN (En) 00183417; RUOS Suy DC-Cam Interview, E3/4594, p. 74, ERN (En) 00710562 (stating that Doeun often visited one of the warehouses). *See also*, Section 8: Roles and Functions – Khieu Samphan, para. 406.

Som port;[1224] and Ren Fung, a Hong Kong-based company established by the Committee which, together with FORTRA,[1225] enabled DK to trade on international markets.[1226] VORN Vet retained a supervisory role until his arrest in November 1978, but did not engage closely in the day-to-day management of the Commerce Committee.[1227]

404. Shortly after VORN Vet's appointment as Deputy Prime Minister, the CPK Standing Committee named VAN Rith, PRUM Nhem *alias* TIT Sun *alias* Nhem and 'Comrade Chhoeun' as the members of the Commerce Committee.[1228] A few weeks later, on 7 May 1976, the Standing Committee assigned NON Suon *alias* Chey, who was in charge of agriculture,[1229] to "come and control Commerce". SUA Vasi *alias* Doeun was also ordered to "go down to Commerce" until July 1976, balancing this with his work at Office 870.[1230] It was not clear to the Chamber what functions NON Suon performed in relation to the Commerce Committee, if any; Witness KAING Guek Eav told the Co-Investigating Judges that it was Doeun who took control of the Committee after KOY Thuon's arrest.[1231] In any event, the Commerce Committee had

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[1224] T. 12 June 2013 (SIM Hao), p. 85; SUON Ri DC-Cam Interview, E3/4624, 2 February 2003, pp. 26-27, ERN (En) 00699075-00699076 (stating that the Kampong Som port was under the authority of the Commerce Committee until 1976).

[1225] T. 31 May 2012 (SAR Kimlomouth), p. 75; Invoice for Green Bean sold to China, E3/2056, 3 January 1978, ERN (En) 00072606 ; Letter from FORTRA to RENG Fung Company in Hong Kong, E3/1619 (also E3/1620, E3/1735 and E3/2517), 7 July 1978, pp. 1-2, ERN (En) 00350169-70.

[1226] T. 31 May 2012 (SAR Kimlomouth), p. 75.

[1227] T. 31 May 2012 (SAR Kimlomouth), p. 37 (stating that VORN Vet "oversaw" commerce and industry, but was not the Commerce Committee chairman); T. 4 June 2012 (SAR Kimlomouth), p. 26 (indicating that he did not see VORN Vet at the office of the Commerce Committee); T. 29 March 2012 (KAING Guek Eav), p. 27 (stating that VORN Vet was arrested in November 1978). *See also*, Book by E. BECKER: *When the War was Over*, E3/20, 1986, p. 325, ERN (En) 00238038 (confirming VORN Vet's arrest in November 1978); Book by D. CHANDLER: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 21, ERN (En) 00182370 (referring to VORN Vet's execution at S-21 in 1978). *See also*, Section 8: Roles and Functions – Khieu Samphan, para. 406.

[1228] Standing Committee Minutes, E3/235, 19-21 April 1976, p. 1, ERN (En) 00183416. *See also*, THING Leap Interview Record, E3/5224, 28 October 2008, p. 3, ERN (En) 00239073; UONG Thea Interview Record, E3/5223, 28 October 2008, p. 3, ERN 00239008; SIM Hao Interview Record, E3/363, 29 October 2008, p. 3, ERN (En) 00239067; Article by T. CARNEY: *The Organization of Power*, in *Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 101, ERN (En) 00105150 (all indicating that the 'Nhem' on the Commerce Committee was PRUM Nhem *alias* TIT Sun, who ran the port at Kampong Som). Nhem was ultimately arrested and taken to S-21: Revised S-21 Prisoner List, E3/342, 19 May 2009, p. 470, ERN (En) 00330065.

[1229] T. 29 March 2012 (KAING Guek Eav), p. 23 (clarifying that 'Comrade Chey' was NON Suon). *See also*, T. 11 July 2013 (Stepen HEDER), pp. 33-34; Standing Committee Minutes, E3/182, 9 October 1975, p. 2, ERN (En) 00183394.

[1230] Standing Committee Minutes, E3/220, 7 May 1976, p. 1, ERN (En) 00182706.

[1231] KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874.

started to report to Doeun by August 1976,[1232] and by November 1976 NON Suon had been arrested and taken to S-21.[1233]

405. In October 1976, the Commerce Committee stopped reporting to Doeun.[1234] At some point thereafter, VAN Rith became chairman of the Commerce Committee (Minister of Commerce), a post he held until the end of the DK period.[1235] Doeun was arrested in February 1977.[1236]

406. Although he never served as Minister of Commerce, surviving documents demonstrate that KHIEU Samphan had an important role in relation to the DK economy, presumably in his admitted capacity as the member of Office 870 responsible for commerce.[1237] In October 1976, the Commerce Committee began to report to KHIEU Samphan instead of Doeun.[1238] Documents addressed or copied to KHIEU Samphan included reports of discussions with foreign trade delegations and other communications relating to international trade;[1239] reports on the quantities of rice sent to the state warehouses by the various Zones, and on the export of rice and

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[1232] Commerce Committee Report addressed to Bang Doeun, E3/2036, 21 August 1976; Commerce Committee Report addressed to Bang Doeun, E3/2037, 28 August 1976; Commerce Committee Report addressed to Brother Doeun, E3/3568, 7 September 1976; Commerce Committee Report addressed to Bang Doeun, E3/2038, 30 September 1976. *See also*, T. 31 May 2012 (SAR Kimlomouth), pp. 9-10.

[1233] S-21 Confession – CHEY Suon, E190.1.14, 17-20 November 1976.

[1234] *See* Section 8: Roles and Functions – Khieu Samphan, fn. 1238.

[1235] T. 12 June 2013 (SIM Hao), p. 68; T. 31 May 2012 (SAR Kimlomouth), p. 15; T. 14 August 2012 (SUONG Sikoeun), p. 102; YĪN Ēng Interview Record, E3/473, 5 March 2008, p. 4, ERN (En) 00223342 ; SUON Ri DC-Cam Interview, E3/4624, 2 February 2003, p. 32, ERN (En) 00699081 ; PET Na DC-Cam Interview, E3/5647, 20 October 2004, p. 10, ERN (En) 00640145. A number of Commerce Committee Reports bear VAN Rith's signature. *See e.g.* Commerce Committee Report concerning use of 140 million Yuan credit, E3/2507, 31 October 1977; Commerce Committee Report concerning use of 140 million Yuan credit, E3/2527, 22 January 1978; Commerce Committee Report concerning use of 140 million Yuan credit, E3/2510, 21 May 1978; Commerce Committee Letter to the Embassy of Yugoslavia, E3/1640, 15 July 1978; Commerce Committee Report concerning use of 140 million Yuan credit, E3/319, 4 November 1978.

[1236] *See* Section 8: Roles and Functions – Khieu Samphan, para. 392, fn. 1195.

[1237] *See* Section 8: Roles and Functions – Khieu Samphan, para. 391.

[1238] *See* Commerce Committee Report addressed to Bang Doeun, E3/2038, 30 September 1976 (last report to "Respected and Beloved Brother Doeun"); Commerce Committee Report addressed to Bang Hem, E3/2040, 29 October 1976 (first report to "Respected and Beloved Brother Hem").

[1239] *See e.g.* Commerce Committee Report addressed to Bang Hem, E3/2040, 29 October 1976; Commerce Committee Report addressed to Bang Hem, E3/304, 9 November 1976; Commerce Committee Report addressed to Bang Hem, E3/1616, 18 October 1977; Commerce Committee Report addressed to Brother Hem, E3/3510, 22 February 1977; Commerce Committee Letter to the Embassy of Yugoslavia, E3/1640, 15 July 1978.

other goods;[1240] purchase requests from various Ministries and lists of materials imported from China;[1241] reports on the use of a line of credit extended to DK by China;[1242] and messages to, from or between FORTRA and Ren Fung.[1243] The Commerce Committee frequently sought instructions and comments from KHIEU Samphan.[1244] Reports were often copied, but not specifically addressed, to VORN Vet, whose name generally came after KHIEU Samphan's in the lists of recipients.[1245] Very few reports were sent or copied to VORN Vet alone.[1246] KHIEU Samphan continued to receive reports and letters on trade matters after VORN Vet's arrest.[1247]

407. KHIEU Samphan visited the state warehouses with VAN Rith, where he inspected products destined for export and encouraged the workers to be careful and

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[1240] *See e.g.* Commerce Committee Report, E3/3511, 8 March 1977; DK Document: *Import Statistics (from January to September)* and *Export Statistics in 1978 (from January to September)*, E3/2059, undated; Commerce Committee Export Statistics, E3/3533, 1978.

[1241] *See e.g.* List of Purchase Requests, E3/3516, February 1978; Commerce Committee Report: *List of Materials Imported from China via Sieng San Vessel*, E3/3413, 20 May 1977; Commerce Committee List of Materials Imported, E3/3518, 11 May 1978; Commerce Committee List of Materials Imported, E3/3528, 26 August 1978; Commerce Committee List of Materials Imported, E3/3534, 29 December 1978.

[1242] *See e.g.* Commerce Committee Report concerning use of 140 million Yuan credit, E3/325, 15 August 1977; Commerce Committee Report concerning use of 140 million Yuan credit, E3/329, 4 January 1978; Commerce Committee Report concerning use of 140 million Yuan credit, E3/311, 21 May 1978; Commerce Committee Report concerning use of 140 million Yuan credit, E3/317, 2 September 1978; Commerce Committee Report concerning use of 140 million Yuan credit, E3/319, 4 November 1978.

[1243] *See e.g.* Commerce Committee Letter addressed to comrade Sokh, E3/324, 31 July 1977; FORTRA Letter, E3/2525, 9 June 1978; FORTRA Letter, E3/2521, 23 November 1978; FORTRA Letter, E3/2520, 7 December 1978.

[1244] *See e.g.* Commerce Committee Report addressed to Bang Hem, E3/1615, 27 September 1977, p. 2, ERN (En) 00234312; Commerce Committee Report addressed to Bang Hem, E3/3514, 1 December 1977, ERN (En) 00634426, 00634427; Commerce Committee Report, E3/3455, 24 January 1978; Commerce Committee Letter addressed to Bang Hem, E3/334, 3 February 1978, p. 1, ERN (En) 00647721; Commerce Committee Report addressed to Bang Hem, E3/3461, 28 April 1978, ERN (En) 00711450; Commerce Committee Report concerning an order of spare parts from Yugoslavia, E3/1637, 12 November 1978, ERN (En) 00711513. *See also*, T. 4 June 2012 (SAR Kimlomouth), pp. 10-12 (confirming that VAN Rith could not make certain decisions, and had to defer to VORN Vet and KHIEU Samphan).

[1245] *See e.g.* Commerce Committee Report addressed to Bang Hem, E3/2054, 1 March 1977; Commerce Committee Report: *List of Materials Imported from China via Sieng San Vessel*, E3/3413, 20 May 1977; Commerce Committee Report, E3/1613, 12 August 1977; Commerce Committee Report addressed to Bang Hem, E3/327, 31 October 1977; Commerce Committee List of Purchase Requests, E3/3516, February 1978; Report of Importation Committee to Commerce Committee, E3/3460, 25 February 1978; Commerce Committee Report on the state of commercial regulations between Kampuchea and China, E3/3566, 3 July 1978; Commerce Committee List of Materials Imported, E3/4548, 26 November 1978.

[1246] *See e.g.* Commerce Committee Report addressed to Committee 51, E3/3453, 6 December 1976.

[1247] *See e.g.* Commerce Committee Minutes, E3/829, 3 December 1978; FORTRA Letter, E3/2520, 7 December 1978.

attentive.[1248] By his own admission, he had responsibility for the distribution of goods to the Zones.[1249] Witnesses KHIEV Neou and SAO Sarun recalled making requests to KHIEU Samphan for the delivery of particular goods to their Zones.[1250] Witnesses NORNG Sophang and PHAN Van, both of whom encoded and decoded telegrams, saw requests for materials sent to, and distribution orders sent by, KHIEU Samphan.[1251]

8.4. Conclusions

408. KHIEU Samphan claimed that his status as an intellectual alienated him from the inner circle of the CPK.[1252] In truth, however, his roles during the DK period prove that he had the confidence and trust of the other members of the Party Centre.[1253] He was trusted to attend and participate in meetings of the Central and Standing Committees, where information was shared and critical decisions were made. He was trusted to live and work closely with the CPK senior leaders, both prior to 1975 and subsequently at K-3 and K-1. He was trusted to represent the FUNK, the GRUNK and the DK regime publically, not only within Cambodia but also on trips abroad.

409. Despite holding an array of titles, the evidence suggests that KHIEU Samphan's decision-making power was primarily limited to matters of economics and foreign trade. However, he had a certain amount of broader authority by virtue of his senior position, as shown by his ability to ensure the safety of some of his family

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[1248] T. 12 June 2013 (SIM Hao), pp. 81-82; T. 25 April 2013 (RUOS Suy), p. 33; RUOS Suy Interview Record, E3/469, 14 March 2008, p. 7, ERN (En) 00205113; YEN Kuch Interview Record, E3/437, 2 September 2009, pp. 2-3, ERN (En) 00375484-85 .

[1249] T. 27 May 2013 (KHIEU Samphan), pp. 83-84; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 142, 154, ERN (En) 00103794, 00103800.

[1250] T. 21 June 2012 (KHIEV Neou), pp. 48-49; T. 7 June 2012 (SAO Sarun), p. 59; SAO Sarun Interview Record, E3/367, 17 December 2008, p. 5, ERN (En) 00278696.

[1251] T. 29 August 2012 (NORNG Sophang), pp. 50-51; T. 3 September 2012 (NORNG Sophang), pp. 58-59; T. 5 September 2012 (NORNG Sophang), p. 49; T. 6 September 2012 (NORNG Sophang), p. 21; T. 14 December 2012 (PHAN Van), pp. 10-11. *See also*, T. 10 June 2013 (SO Socheat), p. 76 (stating that requests for "goods to be delivered to the base" were also made to KHIEU Samphan by telephone).

[1252] T. 13 December 2011 (KHIEU Samphan), pp. 92, 95; T. 12 January 2012 (KHIEU Samphan), p. 67 T. 22 April 2013 (CHHOUK Rin), p. 58; T. 23 April 2013 (CHHOUK Rin), pp. 80-86 (explaining that the CPK secretly applied a distinction between the party members and the "FRONT" whose members were used as diplomats for communications with foreign countries); CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897.

[1253] T. 6 May 2013 (Philip SHORT), pp. 48, 49; T. 8 May 2013 (Philip SHORT), p. 33.

members in the countryside. Through his attendance of Central and Standing Committee meetings, his work in Office 870, his supervision of the Commerce Committee and the content of the speeches he made, he had knowledge of the CPK's policies and access to information about the situation in Cambodia generally, including knowledge of arrests of senior cadres such as KOY Thuon, Doeun and VORN Vet.

9. APPLICABLE LAW: CRIMES AGAINST HUMANITY

9.1. Murder

410. As relevant to Case 002/01, the Closing Order charges the Accused with murder as a crime against humanity during movement of the population (phase one) and at Tuol Po Chrey.[1254]

411. It is undisputed that murder was recognised as a crime against humanity under customary international law by 1975.[1255] Having regard to the development of the crime after World War II, it was foreseeable to the Accused as members of Cambodia's governing authority that they could be charged with murder as a crime against humanity from 1975. Moreover, the definition of murder as developed by post-World War II jurisprudence was sufficiently accessible to the Accused at the relevant time.

412. Jurisprudence clarifying the divergence between the English and French versions of relevant contemporaneous materials has established that it is murder ("*meurtre"*) and not premeditated murder ("*assassinat"*) which constitutes the underlying offence of a crime against humanity.[1256] The elements of the crime of murder are:

[1254] Closing Order, paras 1373, 1375, 1377, 1379-1380; *See also,* Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 2.

[1255] *KAING Guek Eav* Trial Judgement, para. 331. *See also,* Article 6(c) of the Nuremberg Charter (annexed to the 1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis) listing murder (or "assassinat" in the French version of the document) as an underlying offence falling within the definition of crimes against humanity. Murder was also included in the definition of crimes against humanity in Article II(c) of the 1945 Law No. 10 of the Allied Control Council, Article 5(c) of the 1946 Tokyo Charter and General Assembly Resolution 95(I) (affirming the Nuremberg Principles and listing murder as a crime against humanity); *See also,* ILC 1950 Report, Principle VI(c) (affirming murder as an offence recognised within general international law (or 'assassinat' in the French version of the document)) and *Nuremberg* Judgement, pp. 291-293, 301 (convicting the Accused Kaltenbrunner and Frick of the crime against humanity of, amongst others, murder); *See also,, Medical* Judgement, pp. 198, 207, 240-241, 248, 263, 271, 290 (convicting, under Control Council Law No. 10, the Accused Karl Brandt, Handloser, Rudolf Brandt, Mrugowsky, Sievers, Rose and Hoven of crimes against humanity of murder for their role in medical experiments and the euthanasia program).

[1256] *Akayesu* Trial Judgement, para. 588; *Blaškić* Trial Judgement, para. 216.

(i) An act or omission of the accused, or of one or more persons for whose acts or omissions the accused bears criminal responsibility, that caused the death of the victim; and

(ii) The intent of the accused or of the person or persons for whom he is criminally responsible to either to kill or to cause serious bodily harm in the reasonable knowledge that the act or omission would likely lead to death.[1257]

413. The elements of murder can be satisfied whether or not it is shown that a victim's body has been recovered. The fact of a victim's death can be inferred circumstantially from all of the evidence presented. All that is required to be established from that evidence is that the only reasonable inference is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.[1258]

9.2. Extermination

414. As relevant to Case 002/01, the Closing Order charges the Accused with extermination as a crime against humanity during movement of the population (phases one and two) and at Tuol Po Chrey.[1259] It alleges that "many people" died as a result of the conditions imposed during phases one and two of the population movement, specifically the deprivation of food, accommodation, medical care and hygiene.[1260]

415. It is undisputed that extermination was recognised as a crime against humanity under customary international law by 1975.[1261] Accordingly, it was foreseeable to the Accused as members of Cambodia's governing authority that they could be charged

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[1257] *KAING Guek Eav* Trial Judgement, paras 331, 333; *Kordić and Čerkez* Appeal Judgement, para. 37.

[1258] *KAING Guek Eav* Trial Judgement, para. 332; *Kvočka et al.* Appeal Judgement, para. 260.

[1259] Closing Order, paras 1381, 1387-1389; *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 2.

[1260] Closing Order, para. 1387 (referring also to conditions imposed in security centres).

[1261] *KAING Guek Eav* Trial Judgement, para. 334. *See also*, Nuremberg Charter, Article 6(c); Tokyo Charter, Article 5(c); Control Council Law No. 10, Article II(c); General Assembly Resolution 95(I); *See also*, ILC 1950 Report, Principle VI(c) (affirming extermination as an offence recognised within general international law); *Nuremberg* Judgement pp. 287-288, 291-293, 295-296, 300-301 (convicting the Accused Von Ribbentrop, Kaltenbrunner, Rosenberg, Frank and Frick of, inter alia, extermination as a crime against humanity).

with extermination as a crime against humanity from 1975, and the definition of the crime was sufficiently accessible to the Accused at the time of the alleged crimes.

416. The *actus reus* (guilty act) of extermination consists of an act, omission or combination of each that results in the death of persons on a massive scale.[1262] There is no minimum number of victims required to establish extermination.[1263] The requirement of scale is to be assessed on a case-by-case basis, having regard to such factors as the time and place of the killings, the selection of the victims and the manner in which they were targeted, and whether the killings were aimed at the collective group rather than victims in their individual capacity.[1264] The perpetrator's role may be remote or indirect,[1265] and may include creating conditions of life aimed at destroying part of a population, such as withholding food or medicine.[1266]

417. The *mens rea* (criminal intent to commit an act) of extermination consists of the intent:

> (1) to kill persons on a massive scale; or
>
> (2) to inflict serious bodily injury or create conditions of living that lead to death, in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons (dolus eventualis).[1267]

While the *mens rea* for the crime of extermination has not been consistently defined in the jurisprudence of the ICTY and ICTR, appeal jurisprudence from these tribunals has seemingly evolved to exclude *dolus eventualis* from the definition of the *mens rea* for extermination.[1268] The Chamber considers that there was no reasoned basis for a

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[1262] *KAING Guek Eav* Trial Judgement, para. 334; *Seromba* Appeal Judgement, para. 189.

[1263] *KAING Guek Eav* Trial Judgement, para. 336; *Stakić* Appeal Judgement, para. 260. The submission by the NUON Chea Defence that that the victims "must be a numerically significant group" is dismissed to the extent that it suggests that there must be a minimum number of victims. *See* NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 215. The submission by the IENG Sary Defence that "one or a limited number of killings do not constitute extermination" need not be addressed as the scenario does not arise on the facts of this case. *See* Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, E163/5/10.2, 18 January 2013, para. 16.

[1264] *KAING Guek Eav* Trial Judgement, para. 336; *Lukić and Lukić* Appeal Judgement, para. 538.

[1265] *KAING Guek Eav* Trial Judgement, para. 335; *Seromba* Appeal Judgement, para. 189.

[1266] *KAING Guek Eav* Trial Judgement, para. 335; *Brđanin* Trial Judgement, para. 389; *Krstić* Trial Judgement, para. 498.

[1267] *KAING Guek Eav* Trial Judgement, para. 338; *Krstić* Trial Judgement, para. 495.

[1268] *See e.g. Lukić and Lukić* Appeal Judgement, para. 536 (using the phrase "would lead"); *Ntakirutimana* Appeal Judgement, para. 522 ("would inevitably lead").

departure from the original approach taken in the *Krstić* Trial Judgement, which encompassed *dolus eventualis* and was based on a review of pre-1975 jurisprudence.

418. The NUON Chea Defence makes two submissions with respect to the *mens rea* requirement of extermination. First, relying on the *Vasiljević* Trial Judgment, it submits that customary international law in 1975 required that the Accused knew that his action was part of 'a vast murderous enterprise' in which a large number of persons were marked for killing. In the alternative, relying on the *Bagosora* Trial Judgement, it submits that the proper *mens rea* standard is that the Accused intend to kill persons on a massive scale, or to systematically subject a large number of people to conditions of living that would lead to their deaths *in a widespread or systematic manner* (emphasis added).[1269]

419. The Chamber notes that the *Stakić* Appeals Judgement rejected 'knowledge of a vast scheme of collective murder' as a requirement for the *mens rea* of extermination, finding there was no support for the alleged element in the jurisprudence of that Tribunal.[1270] As to whether such knowledge was an element under customary international law in 1975, a review of the *Vasiljević* Trial Judgement reveals that that Chamber concluded that such a requirement existed based on the *Eichmann* judgment and the Nuremberg convictions of Defendants Sauckel and Fritzsche.[1271] To the extent that the Nuremberg tribunals set out the respective defendants' knowledge of the schemes in which they were involved, the Chamber is not satisfied that those statements established a heightened *mens rea* requirement rather than simply reflecting the facts of each case.[1272] The Chamber accordingly rejects this submission.

[1269] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 216-219.
[1270] *Stakić* Appeal Judgement, para. 258.
[1271] *Vasiljević* Trial Judgement, paras 224, 228 (fn. 588).
[1272] *Nuremberg* Judgement, Vol. I, pp. 287 (finding Von Ribbentrop's "diplomatic efforts were so closely connected with war that he could not have remained unaware of the aggressive nature of Hitler's actions."), 293 (finding that Kaltenbrunner, as head of the RSHA, was informed of the RSHA's activities in scouring the occupied territories and various Axis satellites arranging for the deportation of Jews to these extermination institutions), 295 (Rosenberg had knowledge of the brutal treatment and terror to which the Eastern people were subjected… He had knowledge of and took an active part in stripping the Eastern Territories of raw materials and foodstuffs"), 298 (finding "Frank was a willing and knowing participant" in the broader programs i.e. the use of terrorism, the economic exploitation of Poland which led to the death by starvation of a large number of people, and the deportation to Germany of over a million Poles as slave laborers), 301 (finding that, as the Supreme Reich Authority

420. In its alternative submission, the NUON Chea Defence relies upon the *Bagosora* Trial Judgement holding that "[t]he *mens rea* of extermination requires that the accused intend to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths *in a widespread or systematic manner*."[1273] In effect, this submission seeks to reflect the contextual elements of all crimes against humanity (which must be committed as part of a widespread or systematic attack) within the definition of the underlying crime of extermination. International jurisprudence clearly does not require this additional *mens rea* element for extermination. Accordingly, this submission is dismissed.

421. The IENG Sary Defence submitted that there is a further element to the *actus reus* of extermination, that the victims "must have been subjected to conditions *inevitably leading* to death."[1274] In the relevant portion of the *Ntakirutimana* Appeal Judgement, upon which the IENG Sary Defence relied, the ICTR Appeals Chamber found:

> [T]he crime of extermination requires proof that the Accused participated in a widespread or systematic killing or in subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would *inevitably lead* to death, and that the Accused intended by his acts or omissions this result.[1275]

422. While this appeal judgement clearly identifies a requirement that living conditions "inevitably lead to death", the Trial Chamber notes that causation was not at issue in the case and the *Ntakirutimana* Appeals Chamber did not directly address this element of this offence in its reasoning, nor did it set out a source for this

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in Bohemia and Moravia, "Frick knew full well what the Nazi policies of occupation were in Europe, particularly with respect to Jews"), 319 (finding that Von Schirach participated in deporting Jews from Vienna after he became Gauleiter of Vienna and "knew that the best the Jews could hope for was a miserable existence in the ghettos of the East. Bulletins describing the Jewish extermination were in his office."), 320-321 (as Plenipotentiary General for the Utilization of Labor, Sauckel had over-all responsibility of the forced labour program and knew of the ruthless methods and bad conditions involved in its implementation), 339-340 (Bormann was extremely active in the persecution of the Jews, took part in the discussions which led to the removal of 60,000 Jews from Vienna to Poland and signed a decree declaring that the permanent elimination of Jews in Greater German territory could only be solved by applying "ruthless force" and an ordinance withdrawing Jews from the protection of the law courts and placing them under the exclusive jurisdiction of Himmler's Gestapo).

[1273] *Bagosora* Trial Judgement, para. 2191 (emphasis added).

[1274] Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, 18 January 2013, E163/5/10.2, para. 16 (original emphasis).

[1275] *Ntakirutimana* Appeal Judgement, para. 522 (emphasis added).

standard.[1276] Similarly, while judgements in other cases subsequently adopted the *Ntakirutimana* definition of the *actus reus* of extermination, none of these cases turned on or even discussed the "inevitability" standard.[1277]

423. Several subsequent Appeals Chamber judgements from the *ad hoc* Tribunals, while relying on the *Stakić* and *Ntakirutimana* Appeal Judgements, have since defined the *actus reus* of extermination simply as the act of killing on a large scale.[1278]

424. In the Chamber's view, the "inevitability" standard articulated by the *Ntakirutimana* Appeals Chamber with respect to the *actus reus* of extermination appears unsupported. The Trial Chamber consequently rejects this submission by the IENG Sary Defence.

9.3. Persecution on Political Grounds

425. As relevant to Case 002/01, the Closing Order charges the Accused with political persecution as a crime against humanity during movement of the population (phases one and two) and at Tuol Po Chrey. It alleges that the CPK authorities, including the Accused, identified several groups as "enemies" based on their real or perceived political beliefs or political opposition to those wielding power within the CPK, and subjected them to various discriminatory policies.[1279]

426. The Supreme Court Chamber has affirmed the Trial Chamber's finding that persecution existed as a crime against humanity under customary international law by

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[1276] *Ntakirutimana* Appeal Judgement, paras 512-521.

[1277] *Stakić* Appeal Judgement, para. 259 (concerning whether knowledge of a "vast scheme of collective murder" is required for extermination); *Gacumbitsi* Appeal Judgement, para. 86 (concerning whether the Trial Chamber had applied the correct *mens rea* requirement in finding that the actions of the Appellant revealed his "intention to participate in a large scale massacre in Nyarubuye."); *Martić* Trial Judgement, para. 62 (setting out the applicable law of extermination); *Kanyarukiga* Trial Judgement, para. 658 (setting out the applicable law of extermination); *Rukundo* Trial Judgement, para. 586 (setting out the applicable law of extermination); *Gatete* Trial Judgement, para. 636 (setting out the applicable law of extermination).

[1278] *Lukić and Lukić* Appeal Judgement, para. 536; *Bagosora and Nsengiyumva* Appeal Judgement, para. 394; *Rukundo* Appeal Judgement, para. 185.

[1279] Closing Order, paras 1415-1418, 1423-1425; *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 2.

1975.[1280] Having regard to the development of the crime after World War II, it was foreseeable to the Accused as members of Cambodia's governing authority that they could be charged with persecution as a crime against humanity from 1975. Moreover, the definition of persecution as developed by post-World War II jurisprudence was sufficiently accessible to the Accused at the relevant time.

427. The Supreme Court Chamber has affirmed the definition of persecution:

> (i) an act or omission which […] discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law;[1281] and
>
> (ii) deliberate perpetration of an act or omission with the intent to discriminate on political, racial or religious grounds.[1282]

428. With respect to the discriminatory element of the *actus reus*, the Supreme Court Chamber has held that 'discrimination in fact' occurs where a victim is targeted because of the victim's membership in a group defined by the perpetrator on specific grounds, namely on a political, racial or religious basis,[1283] and the victim belongs to a sufficiently discernible political, racial or religious group,[1284] such that requisite persecutory consequences must occur for the group.[1285]

429. With regard to *mens rea*, while the specific intent may not be inferred merely by reference to the general discriminatory nature of an attack, it may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent. Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a group and the general attitude of the alleged perpetrator as demonstrated by his behaviour.[1286]

[1280] *KAING Guek Eav* Trial Judgement, para. 374; *KAING Guek Eav* Appeal Judgement, paras 225, 280 (further noting that this offence was both foreseeable and accessible to the Accused *KAING Guek Eav* as a member of Cambodia's governing authority by 1975).
[1281] *KAING Guek Eav* Trial Judgement, para. 376; *KAING Guek Eav* Appeal Judgement, paras 257, 261-262, 271-278.
[1282] *KAING Guek Eav* Trial Judgement, para. 379; *KAING Guek Eav* Appeal Judgement, paras 236-240.
[1283] *KAING Guek Eav* Trial Judgement, para. 377; *KAING Guek Eav* Appeal Judgement, para. 272.
[1284] *KAING Guek Eav* Appeal Judgement, paras 274, 277.
[1285] *KAING Guek Eav* Trial Judgement, para. 377; *KAING Guek Eav* Appeal Judgement, para. 276.
[1286] *KAING Guek Eav* Trial Judgement, para. 380; *Krnojelac* Appeal Judgement, para. 184.

430. The NUON Chea Defence submits that, contrary to the view advanced by the Supreme Court Chamber in the *KAING Guek Eav* Appeal Judgement, the definition of 'political group' requires that individuals hold political views or be members of a political group or party.[1287] The Chamber notes that individuals who hold political views or are members of a political group or party are the most obvious examples of persons who may be the victims of political persecution.[1288] However, while some international jurisprudence has construed 'political grounds' narrowly,[1289] other jurisprudence has found that political persecution occurred where discrimination has been effected pursuant to political motivations or a political agenda against a group which itself may not hold any political views.[1290] Consequently, the Chamber rejects the narrow interpretation of 'political groups' put forward by the NUON Chea Defence.

[1287] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 223-225. While the NUON Chea submission refers to paras 215-225 of the *KAING Guek Eav* Appeal Judgement, the Chamber considers that it in fact intended to refer to para. 272.

[1288] *See Simić et al.* Trial Judgement, para. 685; *Naletelić and Martinović* Trial Judgement, para. 681; *Bagosora* Trial Judgment, paras 2178, 2212; *Hategikimana* Trial Judgement, para. 711; *Hategikimana* Appeal Judgement, para. 63. *See also, Blaškić* Trial Judgement, para. 235.

[1289] *Krnojelac* Trial Judgement, para. 454; *Semanza* Trial Judgement, para. 471. However, contrary to the submissions of the NUON Chea Defence, the *Nahimana* Trial Chamber does not expressly state that Hutu moderates could not constitute a 'political group': NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 224.

[1290] *See Kvočka et al.* Appeal Judgement, para. 456 (in *obiter*, held that if the motivation for the persecution of non-Serbs was based on the fact they supported secession, the alleged acts would be based on political grounds and would suffice to support persecution); *Tadić* Trial Judgement, para. 714 (found that the accused committed a range of acts against non-Serbs with the intent of furthering the establishment of a Greater Serbia and that he shared the concept that non-Serbs should forcibly be removed from the territory, thereby exhibiting a discriminatory basis for his actions and that this discrimination was on religious and political grounds), 717-718; *Kordić and Čerkez* Trial Judgment, paras 520, 827 (found that there was a campaign of persecution throughout the Indictment period in Central Bosnia (and beyond) aimed at Bosnian Muslims, although the particular discriminatory grounds are not identified), 829 (found that Kordić was the political leader of the Bosnian Croats in Central Bosnia who lent himself enthusiastically to the common design of persecution), p. 306 (convicted Kordić for persecutions on political, racial, or religious grounds); *Kordić and Čerkez* Appeal Judgment, paras 679, 718, 721-723 (affirmed Kordić's conviction for persecution having regard to Kordić's political activities and inclinations, his strongly nationalist and ethnical stance, and his desire to attain a sovereign Croatian state within the territory of Bosnia and Herzegovina at seemingly any cost); *Blagojević and Jokić* Trial Judgement, paras 619, 621 (found that there was "a persecutorial campaign against the Bosnian Muslim population" on racial, religious or political grounds in view of the fact that "many VRS soldiers were cursing at the Bosnian Muslims and calling them names[,] VRS soldiers told refugees to leave the area calling it "Serb country" and part of "Greater Serbia" [and w]hen Bosnian Muslim prisoners arrived at detention centres they were forced to repeat pro-Serb texts including that "this [area] is Serbia""); *Stakić* Trial Judgement, paras 819 (found there was a persecutorial campaign based on the intent to discriminate against all non-Serbs or those who did not share the plan to consolidate Serbian control and dominance in the Municipality of Prijedor); *Stakić* Appeal Judgement, p. 142 (confirmed the conviction for persecution).

431. The particular acts amounting to persecution must be expressly charged.[1291] In this regard, the KHIEU Samphan Defence submits that a link must exist between the acts of persecution and any other underlying offence within the jurisdiction of the ECCC, on the basis that pursuant to Article 9 of the Agreement, the Chamber is obliged to apply the definition of crimes against humanity as set out in the 1998 Rome Statute.[1292]

432. Contrary to this submission and in accordance with the principle of legality, the Chamber is required to apply the definition of persecution as a crime against humanity as it existed under customary international law in 1975.[1293] The Supreme Court Chamber in *KAING Guek Eav* noted that the Nuremberg Tribunal and subsequent military tribunals convicted defendants for an extensive range of persecutory conduct, where this was of equal gravity to other crimes against humanity enumerated in their respective statutes. This conduct encompassed acts committed in connection with other crimes against humanity or war crimes, as well as acts not expressly listed in the constitutive instruments and which were not crimes against humanity in their own right.[1294] The Supreme Court Chamber thus concluded that

> by 1975, it was clear under post-World War II case law that persecution may consist of 'other acts' outside of the Tribunals' charters in addition to other underlying crimes against humanity or war crimes as long as under the doctrine of *ejusdem generis* the conduct rose to the level of gravity and severity of other underlying crimes against humanity, resulting in breaches to fundamental human rights.[1295]

433. Accordingly, the Chamber rejects the KHIEU Samphan Defence submission on this point. Persecutory acts may include the other underlying offences for crimes against humanity (such as murder, extermination, enslavement, imprisonment and torture), as well as other acts which rise to the same level of gravity or seriousness,

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[1291] *Blaškić* Appeal Judgement, para. 139; *Kupreškić et al.* Appeal Judgement, para. 98.
[1292] [KHIEU Samphan] Submissions Regarding the Applicable Law, E163/5/9, 18 January 2013, paras 24-26, 68.
[1293] *KAING Guek Eav* Trial Judgement, paras 26-28, 30-34; *KAING Guek Eav* Appeal Judgement, paras 89-97. The Chamber further notes that the ECCC Law, which applies the Agreement, contains no requirement that persecution be linked to another crime within the jurisdiction of this court. *See* Section 2: Preliminary Issues, para. 19.
[1294] *KAING Guek Eav* Trial Judgement, para. 378; *KAING Guek Eav* Appeal Judgement, paras 253-254; *See also, KAING Guek Eav* Appeal Judgement paras 244-245, 252.
[1295] *KAING Guek Eav* Appeal Judgement, para. 261.

including acts which are not necessarily crimes in and of themselves.[1296] In determining whether this threshold is met, acts should not be considered in isolation but rather should be examined in their context and with consideration of their cumulative effect.[1297]

9.4. Other Inhumane Acts

434. As relevant to Case 002/01, the Closing Order charges the Accused with 'other inhumane acts' as crimes against humanity, namely enforced disappearances, forced transfer and attacks against human dignity.[1298]

435. 'Other inhumane acts' was established as a crime against humanity under customary international law before 1975 and was thus both accessible and foreseeable to the Accused.[1299]

436. The NUON Chea Defence submits that in order to respect the principle of legality, indications that a form of conduct specifically charged in the Closing Order was not considered a crime against humanity at the relevant time precludes criminal responsibility.[1300] Contrary to this view, the conduct underlying the crime of 'other inhumane acts' need not itself have had the status of a crime against humanity. The Pre-Trial Chamber has previously ruled that 'other inhumane acts' is in itself a crime under international law and that it is accordingly unnecessary to establish that each of the sub-categories alleged to fall within the ambit of this offence were

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[1296] *KAING Guek Eav* Trial Judgement, para. 378; *Brđanin* Appeal Judgement, para. 296.
[1297] *Blaškić* Appeal Judgement, para. 135; *Krnojelac* Appeal Judgement, paras 199, 221.
[1298] Closing Order, paras 1470-1478 (enforced disappearances), 1448-1469 (forced transfer), 1434-1436, 1439-1440 (attacks against human dignity); *See also,* Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, pp. 2-3. These offences are characterised as 'other inhumane acts' rather than charged as discrete crimes against humanity in their own right; *See also,* Decision on IENG Sary's Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 376-377.
[1299] *KAING Guek Eav* Trial Judgement, para. 367; Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 385, 395-396, 398; Decision on Appeal by NUON Chea and IENG Thirith Against the Closing Order, D427/2/15, 15 February 2011, paras 130-131, 157, 165; *See also, Stakić* Appeal Judgement, para. 315.
[1300] [NUON Chea] Preliminary Submissions Concerning the Applicable Law, E163/5/11, 18 January 2013, paras 8-9.

criminalised.[1301] Rather, the principle of legality attaches to the entire category of 'other inhumane acts' and not to each sub-category of this offence.[1302] The Trial Chamber agrees with the reasoning of the Pre-Trial Chamber and accordingly rejects the NUON Chea Defence submission.

437. 'Other inhumane acts' functions as a residual category,[1303] criminalising conduct which meets the criteria of a crime against humanity but does not fit within one of the other specified underlying crimes.[1304] The elements of the crime of 'other inhumane acts' are an act or omission of the accused or his subordinate:

(i) causing serious bodily or mental harm or constituting a serious attack on human dignity;[1305] and

(ii) performed deliberately with the intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim at the time of the act or omission.[1306]

438. Acts or omissions must be of a nature and gravity similar to other enumerated crimes against humanity,[1307] the severity to be assessed on a case-by-case basis with due regard for the individual circumstances of the case.[1308] These may include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, as well as the impact of the act upon the victim.[1309] The NUON Chea Defence submission that "the failure during the relevant period to characterize or prosecute any particular act as a crime against humanity would tend to establish … that it was not seen to be of sufficient gravity to rise to the level of an 'other inhumane act'"[1310] ignores the requirement that the severity of particular conduct needs to be assessed on a case-by-case basis with due regard for the

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[1301] Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 371, 378; Decision on Appeal by NUON Chea and IENG Thirith against the Closing Order, D427/3/15, 15 February 2011, para. 156.
[1302] Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 378.
[1303] *KAING Guek Eav* Trial Judgement, para. 367; *Stakić* Appeal Judgement, paras 315-316, referring to *Kupreškić et al* Trial Judgement, para. 563.
[1304] *KAING Guek Eav* Trial Judgement, para. 367; *Kordić and Čerkez* Appeal Judgement, para. 117.
[1305] *KAING Guek Eav* Trial Judgement, para. 368; *Dragomir Milošević* Appeal Judgement, para. 108.
[1306] *KAING Guek Eav* Trial Judgement, para. 371; *Dragomir Milošević*Appeal Judgement, para. 108.
[1307] *KAING Guek Eav* Trial Judgement, para. 367; Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 395-396; *see Krajišnik* Appeal Judgement, para. 331.
[1308] *KAING Guek Eav* Trial Judgement, para. 369; *Kordić and Čerkez* Appeal Judgement, para. 117.
[1309] *Vasiljević* Appeal Judgement, para. 165; *Brima et al.* Appeal Judgement, para. 184; *See also, KAING Guek Eav* Trial Judgement, para. 369.
[1310] [NUON Chea] Preliminary Submissions Concerning the Applicable Law, E163/5/11, 18 January 2013, para. 9, footnote 19.

individual circumstances of the case. Accordingly, while previous characterisation or prosecution of conduct as a crime against humanity may give a general indication of the severity, it is not determinative of severity of the conduct in a particular case. The Chamber accordingly rejects this submission.

439. There is no requirement that the suffering have long term effects, although this may be relevant to the determination of the seriousness of the act.[1311]

440. It follows that in order to fall within the ambit of 'other inhumane acts' as a crime against humanity, the Chamber need only consider whether enforced disappearances, forced transfer and attacks against human dignity are of a similar nature and gravity to the other enumerated offences under the ECCC Law.

9.4.1. ***Enforced Disappearances***

441. As relevant to Case 002/01, the Closing Order charges the Accused with enforced disappearances during movement of the population (phase two).[1312]

442. The Pre-Trial Chamber did not address whether enforced disappearances constituted 'other inhumane acts', considering this to be a mixed question of law and fact more appropriately addressed by the Trial Chamber in the verdict.[1313]

443. The KHIEU Samphan and NUON Chea Defence submit that enforced disappearances cannot amount to a crime against humanity through characterisation as 'other inhumane acts', on the basis that the crime of forced disappearances was not part of customary international law during the period 1975-1979.[1314] The Chamber dismisses this submission on the basis that conduct amounting to an 'other inhumane

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[1311] *KAING Guek Eav* Trial Judgement, para. 369; *Vasiljević* Appeal Judgement, para. 165.

[1312] Closing Order, paras 1470-1478; *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 3.

[1313] Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 397; *See also*, Decision on Appeal by NUON Chea and IENG Thirith Against the Closing Order, D427/2/15, 15 February 2011, paras 61-62, 166.

[1314] [KHIEU Samphan] Submissions Regarding the Applicable Law, E163/5/9, 18 January 2013, paras 29-32, 68; NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 228-229.

act' need not also qualify as a discrete crime, as discussed above.[1315] For the same reason, the Chamber dismisses the related NUON Chea Defence submission that there must have been contemporary evidence of the criminalisation of 'other inhumane acts' specifically for forced disappearances. Instead, the Chamber must be satisfied that the conduct of enforced disappearances is of sufficient gravity to amount to an 'other inhumane act' in this case.

444. Enforced disappearances have previously been found to amount to criminal conduct. In the *Nuremberg* Judgement, the administration of German territories in accordance with Nazi Germany's "Nacht und Nebel" (the Night and Fog) Decree, an explicit state policy which used enforced disappearances in order to spread terror throughout the population and suppress dissent,[1316] was found to violate Article 46 of the 1907 Hague Regulations and was thus found to constitute a war crime.[1317] Field Marshal Keitel was convicted, amongst other things, for his role in implementing this program.[1318] While it is unclear from the *Nuremberg* Judgment whether his conduct concerning enforced disappearances was also considered to amount to a crime against humanity, it was clearly considered to be of extreme gravity.

445. Implementation of the Night and Fog Decree was also found to amount to a war crime and a crime against humanity in the *Justice* case.[1319] Most relevantly, this case condemned the Night and Fog program as amounting to inhumane treatment in light of its impact not only on the individuals who disappeared, but also on prisoners' families who were denied any information as to their relatives' fate.[1320]

446. Post-1975 instruments and jurisprudence also recognise that such conduct may be considered of the utmost gravity. In 1978, the General Assembly and human rights courts recognised that enforced disappearances typically involve a violation of the right to life, liberty and security of person, freedom from torture, freedom from

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[1315] *See* Section 9: Applicable Law: Crimes Against Humanity, paras 434-440.
[1316] *See Justice* Judgement, p. 75; *Nuremberg* Judgement, pp. 232-233.
[1317] *Nuremberg* Judgement, pp. 232-233.
[1318] *Nuremberg* Judgement, pp. 290-291.
[1319] *Justice* Judgement, pp. 1057, 1058 (crimes against humanity), 1061 (war crimes).
[1320] *See e.g. Justice* Judgement, pp. 75, 1042, 1057-1058 (Defendant von Ammon, the Justice Ministry's expert who supervised the Night and Fog program, commented that the essential point of the Night and Fog program consisted of making prisoners from the occupied territories disappear and leaving their relatives, friends, and the population unaware of their fate, with the purpose of creating an atmosphere of constant fear and anxiety).

arbitrary arrest and detention, the right to a fair and public trial and to recognition before the law.[1321] The Human Rights Committee has equally found forced disappearances constitute inhumane or degrading treatment.[1322] More recent international instruments have also emphasised that acts of enforced disappearances are of extreme gravity, similar to that of the other enumerated crimes against humanity. Some have criminalised enforced disappearances as a discrete crime against humanity.[1323]

447. International jurisprudence from the *ad hoc* tribunals has also recognised that enforced disappearances may be serious enough to constitute 'other inhumane acts' or persecution as a crime against humanity, all other conditions being satisfied.[1324] The Rome Statute also recognises enforced disappearances as a discrete crime underlying crimes against humanity.[1325]

448. The Trial Chamber consequently finds that enforced disappearances may be of similar gravity to the other crimes against humanity enumerated in Article 5 of the ECCC Law and thus may fall within the ambit of 'other inhumane acts'. Enforced disappearances occur when: (i) an individual is deprived of his or her liberty; (ii) the deprivation of liberty is followed by the refusal to disclose information regarding the fate or whereabouts of the person concerned, or to acknowledge the deprivation of liberty, and thereby deny the individual recourse to the applicable legal remedies and procedural guarantees, and (iii) the first and second elements were carried out by state

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[1321] General Assembly Resolution 33/173 on Disappeared Persons, 20 December 1978, Preamble and 1992 Declaration, Art. 1(2). *See also, Velasquez-Rodriguez v. Honduras*, Inter-Am.Ct.H.R., Judgement, 29 July 1988 (Series C, No. 4), paras 155-157; *Aslakhanova v. Russia*, ECtHR (Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10), Judgement, 18 December 2012, paras 131-133; *Kurt v. Turkey*, ECtHR (Application no. 15/1997/799/1002), Judgement, 25 May 1998, para. 124.

[1322] *Mojica v. Dominican Republic*, HRC, Communication No. 449/1991, 15 July 1994, para. 5.7; *Laureano v Peru*, HRC, Communication No. 540/1993, 25 March 1996, para. 8.5.

[1323] *See e.g.* OAS Declaration of 1983; Declaration on the Protection of all Persons from Enforced Disappearance, UNGA Res. 47/133, 18 December 1992; 1994 Inter-American Convention on Forced Disappearances of Persons (entered into force 28 March 1996); International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (entered into force 23 December 2010). The Chamber notes that Cambodia ratified this convention on 27 June 2013.

[1324] *Brima et al*. Appeal Judgement, para. 184 (other inhumane act); *Kupreškić et al* Trial Judgement, para. 566 (other inhumane act); *Kvočka et al.* Trial Judgement, para. 208 (other inhumane act); *Gotovina et al*. Trial Judgement, para. 1839 (persecution).

[1325] ICC Statute, Article 7(1)(i).

agents, or with the authorisation, support or acquiescence of a State or political organisation.[1326]

9.4.2. *Forced Transfer*

449. As relevant to Case 002/01, the Closing Order charges the Accused with forced transfers within the territory of Cambodia as 'other inhumane acts' through movement of the population (phases one and two).[1327]

450. Forced transfer involves the (i) intentional,[1328] (ii) forced displacement[1329] of individuals (iii) from an area in which they are lawfully present,[1330] (iv) not justified by concerns regarding the security of the civilian population or military necessity.[1331] Forced transfers undertaken in the interest of civilian security or military necessity, just as all measures restricting freedom of movement, "must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired

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[1326] *Justice* Judgement, pp. 75, 1075. *See also, Gotovina et al*. Trial Judgement, para. 1837; *Prosecutor v. Rašević and Todović*, Court of BiH, Case No. X-KR/06/275, First Instance Verdict, 28 February 2008, p. 98 (the elements of the offense of enforced disappearance as provided in Article 172(1)(i) of the CC of BiH); ICC Statute, Article 7(2)(i); ICC Elements of Crimes, Article 7(1)(i).

[1327] Closing Order, paras 1448-1469; *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 2.

[1328] The accused must intend all criminal elements: *Ministries* Judgement, pp. 473, 497, 645, 660, 860; *High Command* Judgement, pp. 607, 609, 679; *Hostage* Judgement, p. 1281; *Milch* Judgement, Phillips Concurrence, p. 871; *Pohl* Judgement, pp. 984, 1059 (acquittal partially on the basis of ignorance of the illegal purpose of the "forced movement"); *Farben* Judgement, p. 1189; *See also, Krajišnik* Appeal Judgement, para. 332; *Krnojelac* Appeal Judgement, paras 245-246.

[1329] "Force" includes coercion, fraud, exploitation of a panic and the pressure of terror: *see e.g. Nuremberg* Judgement, pp. 244-246; *Milch* Judgement, Musmanno Concurrence, p. 800; *RuSHA* Judgement, p. 127; *Ministries* Judgement, p. 491 (victims were given only one or two hours warning); *High Command* Judgement, p. 603; *Eichmann* Judgement, paras 64-66, 96(a), 237 (falsely assuring victims that their displacement would be only temporary); *See also, Stakić* Appeal Judgement, para. 281; *Blagojević and Jokić* Appeal Judgement, para. 109 (force may be demonstrated by "coercive circumstances in which [victims] found themselves and the humanitarian disaster caused by [the perpetrator's actions]"); *Krnojelac* Appeal Judgement, para. 229 ("it is the absence of genuine choice that makes displacement unlawful").

[1330] "Legal" residents include refugees and stateless persons: *see e.g. Ministries* Judgement, pp. 480, 496, 500, 633-634, 654; *High Command* Judgement, p. 572; *Justice* Judgement, pp. 971-974; *Eichmann* Judgement, paras 100, 111.

[1331] A displacement may only be justified by civilian security or military necessity: *see e.g. Krupp* Judgement, pp. 1432-1433; *Milch* Judgement, Phillips Concurrence, p. 866; Geneva Convention, Articles 2, 27, 42, 49; *Farben* Judgement, pp. 1182, 1187; *See also, Krajišnik* Appeal Judgement, paras 331, 333; *Krnojelac* Appeal Judgement, para. 222.

result; and they must be proportionate to the interest to be protected".[1332] For a transfer to be considered proportional, evacuees must be "transferred back to their homes as soon as hostilities in the area in question have ceased".[1333] Additionally, those responsible for a transfer "shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated".[1334] Finally, the Chamber notes that displacement is not justifiable where the humanitarian or military situation causing the displacement is itself the result of the accused's own unlawful activity.[1335]

451. The Co-Prosecutors bear the burden of proof in relation to all criminal elements, including the absence of justification of the forced transfer under international law.[1336] Whether an act was indeed permissible under international law requires an assessment of the factual context on a case-by-case basis.[1337] This factual context must be viewed from the time at which the decision to undertake a transfer was made.[1338] Thus evidence that a plan or policy to evacuate persons was formulated "a considerable time" before may indicate that a transfer was carried out "irrespective of any question of military necessity".[1339]

452. The NUON Chea Defence submits that forced transfer did not form part of customary international law between 1975 and 1979.[1340] The Chamber dismisses this submission on the basis that conduct amounting to an 'other inhumane act' need not amount to a discrete crime, as discussed above.[1341] Instead, the Chamber must be

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[1332] *General Comment No. 27: Freedom of Movement (Art. 12)*, CCPR/C/21/Rev.1/Add.9, 1 November 1999, para. 14; ICCPR, Article 12.
[1333] Geneva Convention (IV), Article 49.
[1334] Geneva Convention (IV), Article 49.
[1335] *Stakić* Appeal Judgement, para. 287.
[1336] As a general matter, the Prosecution bears the burden of proof in relation to all criminal elements: Internal Rule 87(1); *Ntawukulilyayo* Appeal Judgement, paras 103-104. Further, the ICTY Appeals Chamber has emphasised that where an element of a crime requires that it is done without grounds permitted in international law, the Prosecution bears the burden of proof: *Brđanin* Appeal Judgement, para. 337 (in relation to wanton destruction).
[1337] *Brđanin* Appeal Judgement, para. 337.
[1338] *Hostage* Judgement, p. 401; *Krstić* Trial Judgement, para. 526.
[1339] *von Manstein* Trial, pp. 522-523; *Krstić* Trial Judgement, paras 526-527.
[1340] [NUON Chea] Preliminary Submissions Concerning the Applicable Law, E163/5/11, 18 January 2013, paras 10-27.
[1341] *See* Section 9: Applicable Law: Crimes Against Humanity, paras 434-440.

satisfied that the conduct of forced transfer is of sufficient gravity to amount to an 'other inhumane act' in this case.

453. The NUON Chea Defence also appears to argue that acts of forced transfer are not as serious as other crimes against humanity and therefore cannot amount to 'other inhumane acts'. In this regard, it submits that displacement for economic purposes was widely practiced prior to, during and immediately following the temporal jurisdiction of the ECCC,[1342] and that prior to 1975 displacement within a territory could only rise to the level of other enumerated crimes if undertaken in the context of belligerent occupation, for a criminal purpose or in a criminal manner.[1343] The Chamber does not consider these submissions to be persuasive. Various pre-1975 instruments and jurisprudence indicate that forced displacements within national boundaries, carried out on grounds other than civilian security or military necessity, are of the utmost gravity.

454. The Tokyo Charter, Nuremberg Charter, and Control Council Law No. 10 each codified unlawful displacement both as a war crime and crime against humanity.[1344] The Nuremberg Tribunal and domestic courts applying international law before 1975 entered numerous convictions for forced movements of population including displacement within national boundaries perpetrated on grounds not recognised in international law, namely civilian security or military necessity.[1345] Between 1949 and

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[1342] [NUON Chea] Preliminary Submissions Concerning the Applicable Law, E163/5/11, 18 January 2013, paras 13-23.

[1343] [NUON Chea] Preliminary Submissions Concerning the Applicable Law, E163/5/11, 18 January 2013, paras 10-12, 24-27; *See also*, Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, 18 January 2013, E163/5/10.2, paras 19-20.

[1344] Tokyo Charter, Article 5; Nuremberg Charter, Article 6(b)-(c); Control Council Law No. 10, Article II(1)(b)-(c); *See also*, *Justice* Judgement, pp. 966-967, 971-984.

[1345] Convictions were entered for forced displacement within territorial boundaries in the following: *Pohl* Judgement, p. 985 (*See also*, *Pohl* Supplemental Judgement, pp. 1174-1175; *Pohl* Judgement, Musmanno Concurrence, pp. 1122-1123); *Ministries* Judgement, pp. 474, 579, 598-599; *High Command* Judgement, pp. 573-574, 576, 606; *Hostage* Judgement, pp. 1303-1305; *Farben* Judgement, pp. 1185-1186, 1191; *RuSHA* Judgement, pp. 94, 126-127, 130, 158; *Eichmann* Judgement, paras 73, 75, 207-209; *Greiser* Trial, pp. 86-88, 91; *Becker* Trial, p. 71. In particular, without concern for the status of annexed or occupied portions of Poland, courts found that Polish civilians were "deported" to extermination camps in Poland: *Pohl* Judgement, p. 985 (*See also*, *Pohl* Supplemental Judgement, pp. 1174-1175; *Pohl* Judgement, Musmanno Concurrence, p. 1146); *Eichmann* Judgement, paras 122-127, 137, 141, 198, 217; *Greiser* Trial, pp. 91, 92, 95; *Goeth* Trial, p. 3.

1975, international instruments recognised forms of displacement, without regard for the crossing of any boundary, as war crimes and crimes against humanity.[1346]

455. More recent jurisprudence from international criminal tribunals,[1347] as well as Article 7(1)(d) of the Rome Statute provide further indications that forced transfer may be considered of similar gravity to other crimes against humanity. The Trial Chamber accordingly finds that forced transfer may constitute an 'other inhumane act', depending on the circumstances of the case.

9.4.3. *Attacks Against Human Dignity*

456. As relevant to Case 002/01, the Closing Order alleges that attacks against human dignity resulted from depriving the civilian population of adequate food, shelter, medical assistance, and minimum sanitary conditions during phases one and two of the population movements.[1348]

457. According to international jurisprudence, deprivations of food, water, adequate shelter and medical assistance and sub-par sanitary conditions in the context of detention constitute an attack upon the human dignity of the detainees, and the offence of cruel treatment as violations of the laws or customs of war under the ICTY Statute.[1349] Similar deprivations have been described as cruel and inhumane treatment that can rise to the level of gravity of the other crimes enumerated in Article 5 of the

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[1346] *See e.g.* Geneva Convention (IV), Articles 2, 27, 42, 49; Nuremberg Principles, VI(b)-(c); Genocide Convention, art. II; Supplemental Slavery Convention, arts 3(3), 6, 7(c); Discrimination Convention, art. 5(d)(i); Basic Principles for the Protection of Civilian Populations in Armed Conflicts, A/RES/2675 (XXV), 9 December 1970; Apartheid Convention, art. II; United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflict, A/RES/3318(XXIX), 14 December 1974, para. 5; *See also*, Additional Protocol I, art. 85(4)(a); Additional Protocol II, art. 17; Commentary to the Geneva Conventions, p. 279.

[1347] *Stakić* Appeal Judgement, para. 317; *Krajišnik* Appeal Judgement, paras 330-331. The ICTY Appeals Chamber made similar findings as to whether forced transfer was of similar gravity to other enumerated crimes in considering whether forced transfer could amount to persecution (*Blaškić* Appeal Judgement, para. 153; *Krnojelac* Appeal Judgement, para. 222).

[1348] Closing Order, paras 1434-1436, 1439-1440; *See also*, Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, as amended by the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3, p. 2.

[1349] *Prlić et al*. Trial Judgment, Volume 3, paras 1159, 1161, 1164, 1167-1168, 1170-1172, 1176-1178, 1181-1182, 1184, 1192-1194, 1197-1199, 1201-1202, 1204-1205; *Limaj et al.* Trial Judgment, paras 288-289, 333, 652; *Delalić et al.* Trial Judgement, 16 November 1998, para. 1119. *See also*, *Prlić et al*. Trial Judgment, Volume 3, paras 1102-1111, 1114-1116, 1118-1120, 1124-1126, 1129-1130, 1132, 1135-1137, 1140-1142, 1145-1147, 1149-1150, 1152-1153 (finding the treatment also constituted the offence of inhuman treatment under Article 2(b) of the ICTY Statute).

ECCC Law and amount to persecution as a crime against humanity.[1350] In the context of genocide, the same deprivations have been considered to evidence conditions of life that would bring about a group's physical destruction.[1351]

458. The Trial Chamber consequently finds that such deprivations may be of similar gravity to the enumerated crimes against humanity and thus may fall within the ambit of 'other inhumane acts'.

[1350] *Blaškić* Appeal Judgement, para. 155; *Stanisić and Župljanin* Trial Judgment, paras 203, 224, 226, 678-679, 681, 683, 701, 928, 930, 936-937, 969, 984-985, 1120-1121, 1191-1192, 1249-1250, 1286-1288, 1341, 1256-1358, 1484, 1498-1500, 1553-1555; *Blagojević and Jokić* Trial Judgment, paras 606, 610, 620-621; *Duško Sikirica* Sentencing Judgement, paras 127, 161, 203.
[1351] *Karadžic*, Rule 98 *bis* Appeal Judgement (AC), paras 48-49; *Brđanin* Trial Judgment, para. 691; *Kayishema and Ruzindana* Trial Judgment, paras 115-116.

10. MOVEMENT OF THE POPULATION (PHASE ONE)

10.1. Closing Order

459. According to the Closing Order, after Khmer Rouge troops took over Phnom Penh on 17 April 1975, using threats and violence, they forcibly evacuated the city's entire population, which was predominantly civilian, to rural areas.[1352] The evacuation was not justified by grounds permitted by international law.[1353] The Closing Order indicates that in implementing the evacuation many civilians and officials of the Khmer Republic, especially those who were high-ranking, were killed or disappeared.[1354] Moreover, during the course of the evacuation, evacuees endured harsh conditions and lacked food, water, medicine or accommodation causing many to fall sick or die.[1355] The Closing Order charges the Accused with murder, extermination, political persecution and 'other inhumane acts' of (i) attacks against human dignity and (ii) forced transfer, as crimes against humanity for crimes allegedly committed during movement of the population (phase one).[1356]

10.2. Events of 17 April 1975 and the Ensuing Days

10.2.1. *Implementation*

460. On the morning of 17 April 1975 Khmer Rouge forces from various zones across Cambodia[1357] attacked and entered Phnom Penh from all directions.[1358] Khmer

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[1352] Closing Order, paras 164, 224-233, 1448-1450.
[1353] Closing Order, paras 242-249, 1449, 1452-1469.
[1354] Closing Order, paras 206, 209, 232, 234-235.
[1355] Closing Order, paras 236-240, 1435-1436.
[1356] Closing Order, paras 1373, 1377 (murder), 1381, 1387 (extermination), 1416 (political persecution) 1434-1436 (other inhuman acts comprising attacks against human dignity), 1448-1453, 1455, 1458-1459, 1461, 1468-1469 (other inhuman acts comprising forced transfer). On 19 October 2011, pursuant to severance, the Chamber clarified that paras 221-260 of the Closing Order relating to phase 1 of the population movement, and the offenses charged, fell within the scope of Case 002/01. *See* Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, E124/7.3, 18 October 2011, pp. 1-2.
[1357] T. 4 October 2012 (MEAS Voeun), pp. 13-15 (divisions from the Southwest, the East and the North Zones were sent to attack Phnom Penh); KAING Guek Eav Interview Record, E3/356, 25 November 2008, pp. 10-11, ERN (En) 00242904-05 (armed forces of the Special Zone, the Southwest Zone, the East Zone and the North Zone entered the city during the April 1975 evacuation, and each zone had a different commander). **North Zone**: LAY Ean Interview Record, E3/376, 17 January 2009, p. 2, ERN (En) 00278689 (the witness was a soldier in the regiment that originated from the North Zone and attacked Phnom Penh on 17 April); THA Sot Interview Record, E3/464, 19 January 2008, pp.

Rouge troops, including children and teenagers, were commonly identified as wearing black pants and shirts, rubber thongs, *kramas* or caps, and being heavily armed.[1359]

2-3, ERN (En) 00226107-08 (the witness led troops from Zone 304 to Phnom Penh); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 3, ERN (En) 00223335 (the witness was part of the "North Army" that entered Phnom Penh); KUNG Kim Interview Record, E3/3959, 9 January 2009, p. 2, ERN (En) 00278681 (the witness participated in the attack on Phnom Penh as a squad leader in a division in the North Zone). **Southwest Zone**: IENG Phan Interview Record, E3/419, 23 November 2009, p. 3, ERN (En) 00411004 (the witness participated in the attack on Phnom Penh on 17 April as part of the Southwest Zone). **Special Zone**: UM Keo Interview Record, E3/5173, 8 May 2008, p. 2, ERN (En) 00272659 (the witness was in a regiment in the Special Zone that entered Phnom Penh on 17 April 1975).

[1358] T. 9 January 2013 (UNG Ren), p. 42 (was part of the attack from the southwest, from Pochentong while the Southwest force attacked along National Road No. 4); T. 10 January 2013 (UNG Ren), pp. 49, 87 (was part of the attack from Pochentong); T. 11 January 2013 (CHHAOM Se), p. 57 (male and female combatants jointly advanced from Pochentong, and reached the Propaganda Ministry); T. 5 November 2012 (SUM Chea), pp. 8-9, 22 (formed part of the attack coming from Baset, north of Phnom Penh); T. 25 October 2012 (KUNG Kim), p. 71 (had heard that different military zones would attack from different directions); T. 3 October 2012 (MEAS Voeun), pp. 93-94 (witness' division was responsible for the attack from the southwest, namely Ponchentong, Stung Meancheay and Boeng Prayap as well as the Tonle Sap); T. 24 April 2013 (CHUON Thi), p. 46 (his battalion attacked from the area of Ra Samraong, Samraong's railway station, located north of Pochentong, and south of Tuol Leab); T. 5 December 2012 (KIM Vanndy), p. 83 (on 17 April, at about 6 a.m. saw a lot of Khmer Rouge soldiers entering Phnom Penh); T. 22 November 2012 (OR Ry), p. 98 (they came through Preak Pnov); T. 28 January 2013 (Al ROCKOFF), p. 19 (saw truckloads coming from the north by the French Embassy at 8 a.m., other groups came from other directions); T. 29 January 2013 (Al ROCKOFF), pp. 27-28 (they all materialized that morning from every direction); T. 22 October 2012 (CHUM Sokha), p. 33; T. 14 November 2012 (MEAS Saran), p. 97 (saw Khmer Rouge soldiers marching along the street from the West and many more coming in from the distance); *NUFC Radio: CPNLAF in Central Phnom Penh* and *NUFC Radio on Phnom Penh Liberation, Occupation of U.S. Embassy* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166972, 00166977 (both outlining the move into Phnom Penh from the north, south, east and west).

[1359] T. 5 December 2012 (PECH Srey Phal), p. 15 (Soldiers wore black or khaki and some carrying rifles and rocket-launchers); T. 22 October 2012 (CHUM Sokha), p. 34 (Khmer Rouge soldiers entered the city carrying guns and grenade launchers, and later in the day CHUM saw armoured tanks and military trucks); T. 19 October 2012 (YIM Sovann), pp. 80, 90 (in black uniform with red scarves and all fully armed); T. 5 December 2012 (KIM Vanndy), pp. 86, 88; T. 22 November 2012 (OR Ry), pp. 98-99; T. 28 January 2013 (Al ROCKOFF), pp. 22 (referring to a photo taken by Al Rockoff on the morning of 17 April 1975 of a young, armed Khmer Rouge boy, E3/3986), 21-22 (recalling the soldiers were young teenagers, maybe 16), 24-27, 110 (they were young kids put into service by Khmer Rouge soldiers), 29, 100-101; T. 29 January 2013 (Al ROCKOFF), p. 16; T. 23 October 2012 (LAY Bony), p. 89; T. 24 October 2012 (LAY Bony), pp. 21, 25; T. 23 November 2012 (CHAU Ny), p. 47 (they were armed); T. 14 November 2012 (MEAS Saran), pp. 97-98; T. 27 May 2013 (AUN Phally), pp. 50-51 (were dressed in black and were wearing bits of red ribbon or cloth; she also saw pieces of blue cloth tied to Khmer Rouge vehicles entering the city); T. 4 June 2013 (BAY Sophany), pp. 7, 43 (armed Khmer Rouge soldiers dressed in black, both male and female, were walking through the streets with stern expressions on their faces, firing off their guns in the air); T. 30 May 2013 (PO Dina), p. 113 (Khmer Rouge forces wearing all black with scarves around their necks and armed with rifles); T. 30 May 2013 (NOU Hoan), p. 31 (a black uniform with car-tyre thongs, AK-47 rifles and a beret); T. 12 December 2012 (Denise AFFONÇO), pp. 68, 70 (also encountered soldiers dressed in green), 71; T. 9 April 2013 (François PONCHAUD), pp. 21-23, 28 (describing young people, some of them wearing black clothes and others wearing green clothes and carrying different rifles), 70 (describing two groups of soldiers, the first young, soldiers around 14-15 years old, and the second around 30 years old); T. 10 April 2013 (François PONCHAUD), pp. 12 (describes young Khmer Rouge soldiers wearing Maoist caps), 52, 116-117 (young Khmer Rouge soldiers of 13-14 years old watched over them at the French Embassy); T. 25 October 2012 (KUNG Kim), pp. 27, 45, 56 (a Khmer Rouge soldier, he described himself as quite young, perhaps 16 or 17, at the time of entering Phnom Penh. The Chamber notes

Although Khmer Rouge troops had been ordered to capture Phnom Penh on 18 April 1975, the town was liberated earlier as the opposing Khmer Republic forces in Phnom Penh posed no resistance.[1360] Despite limited instances of gunfire between Khmer Rouge and military troops,[1361] after entering the capital, fighting generally ceased.[1362] The various Khmer Rouge divisions took control of different areas of Phnom Penh.[1363]

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however, that according to his date of birth, he would have been 18 at the time); T. 6 June 2013 (Sydney SCHANBERG), p. 66 (describing both young and old soldiers); T. 6 November 2012 (MOM Sam Oeurn), p. 7 (young soldiers evacuated her); T. 4 December 2012 (TOENG Sokha), p. 41 (describes young soldiers carrying guns near the Faculty of Law); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (described Five Khmer Rouge soldiers, wearing black uniforms and black car-tire sandals and equipped with AK-47 guns); Jon SWAIN Article (London Times), E3/51, 11 May 1975, pp. 1-2, ERN (En) 00003276-77 (describing Khmer Rouge soldiers who were hardly more than boys, riding around in vehicles, a soldier in a soft Maoist hat, and young black-clad soldiers, some who were hardly taller than their guns).

[1360] T. 8 October 2012 (MEAS Voeun), pp. 8-11, 95-96; T. 22 October 2012 (CHUM Sokha), p. 91 (did not see any LON Nol soldiers fight the Khmer Rouge invasion, rather, he saw many LON Nol soldiers surrender their arms); T. 9 April 2013 (François PONCHAUD), p. 70 (they thought that there would be fierce fighting in Phnom Penh, but there was no such fighting at all; they could conquer Phnom Penh without fighting and people felt relieved at that time); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier, stated they met some resistance at the edge of the city, but none when they entered Phnom Penh as the LON Nol soldiers had already surrendered).

[1361] *Cambodian Embassy in Bangkok Loses Contact with Phnom Penh* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166971 (the source said fighting continued around pockets still held by republican forces in the city); U.S. State Department Telegram, Subject: American Talks of Phnom Penh After The Fall, E3/4148, 4 May 1975, para. 2, ERN (En) 00413476 (an evacuated American reported fighting continued for a week to ten days after the city fell, well after he estimated that the last FANK pockets had been wiped up); T. 30 May 2013 (YIM Romdoul), pp. 67, 86 (civil party stated Khmer Rouge forces were firing shots into his neighbor's home that day, and a crossfire resulted with an armed resident who was a colonel in the military). *See also*, Section 10: Movement of the Population (Phase One), para. 510.

[1362] T. 4 October 2012 (MEAS Voeun), p. 15; T. 8 October 2012 (MEAS Voeun), p. 10 (we used artillery when we attacked and reached Pochentong, but once we were in Phnom Penh we no longer engaged in the use of artillery); T. 22 October 2012 (CHUM Sokha), pp. 35 (did not observe any civilian casualties during the capture of Phnom Penh), 91 (did not see any LON Nol soldiers fight the Khmer Rouge entry; their surrendered arms were stacking up along the roadside); T. 19 October 2012 (YIM Sovann), p. 79 (after the Khmer Rouge soldiers arrived in Phnom Penh, the LON Nol soldiers and the Khmer Rouge soldiers were not fighting because the LON Nol soldiers were defeated and surrendered; however the Khmer Rouge soldiers violated the soldiers of the LON Nol and the people).

[1363] T. 8 October 2012 (MEAS Voeun), pp. 8-9; T. 25 October 2012 (KUNG Kim), pp. 10, 24-25, 72-73 (the witness was in charge of the area north of Wat Phnom to Chrouy Chanvar Bridge); T. 5 April 2012 (KAING Guek Eav), pp. 34-35 (all of Phnom Penh was divided into different areas, or sectors, according to the divisions which came to liberate it who were then supposed to protect those areas); T. 8 April 2013 (CHHAOM Se), pp. 34-35 (his division was charged with monitoring the area surrounding Phsar Thmei), 38 (divisions from the Special Zone were also in charge of monitoring the city); T. 5 November 2012 (SUM Chea), pp. 88-89 (the city was divided according to zones. The East Zone covered the stretch from Phsar Thmei (central market) to the south; the Southwest covered Phsar Thmei to the western part of the city, near Pochentong Airport; from Phsar Thmei to the riverfront was occupied by people from the North), 103 (Hak, the head of the battalion, talked to us about how the city was classified into sections where different groups of soldiers

10.2.2. ***Radio Broadcasts***

461. There were a series of announcements and radio broadcasts during the course of the morning by various parties including HEM Keth Dara (representative of MONATIO or *Mouvement National*)[1364] and the supreme patriarchs of two Buddhist religious orders.[1365] Thereafter, General MEY Sichan, spokesperson for the government's armed forces, invited Khmer Rouge representatives to Phnom Penh and called on all Khmer Republic soldiers across the country to lay down their weapons.[1366] Within minutes of that announcement, Khmer Rouge took control of the radio, rejected the invitation to negotiate with any of the "contemptible, traitorous LON Nol clique", claimed they were "entering the capital through force of arms", invited the victorious CPNLAF commanders to the Ministry of Information and ordered "the remaining members of the traitorous Lon Nol clique [to] lay down weapons and surrender" to the FUNK forces from the north and east regions.[1367]

462. Shortly thereafter, an unidentified Khmer Rouge leader announced that after meeting with CHHIM Chuon, LON Non and the supreme patriarchs of the two main religious orders, the Khmer Republic army agreed to lay down its weapons and

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would be tasked with protecting each respective section); SEM Hoeun Interview Record, E3/5280, 10 March 2009, p. 3, ERN (En) 00290514 (was ordered to defend the radio station at Wat Phnom).

[1364] *'Nationalist Movement' Leaders Asks Surrender Over Phnom Penh Radio* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166972-73 (a representative of the '*Nationalist Movement'* asked the National Armed Forces High Command to order their troops to lay down their arms, and inviting the representatives of other groups to the Ministry of Information); Book by F.PONCHAUD: *Cambodia Year Zero*, E243.1, ERN (En) 00862029 (identifying MONATIO to *Mouvement National*).

[1365] *Patriarchs Appeal for Cease-Fire, Khmer Rouge to Attend Meeting* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166973 (calling on the parties to cease combat).

[1366] *Government General Invites Other Side's Envoy to Phnom Penh* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166974; T. 7 December 2012 (HUN Chhunly), p. 40 (announcement made by General MEY Sichan); T. 9 April 2013 (François PONCHAUD), pp. 23-24 (the representative of the LON Nol soldiers made it clear that the LON Nol soldiers now were defeated); BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830 (saw General MEY Sichan with three Khmer Rouge soldiers accompanying him to the national radio station where the broadcast was made); MOEUNG Sonn Interview Record, E3/1745, 19 March 2009, pp. 2, 4, ERN (En) 00338383, 00338385 (living in Kampong Som, he heard the announcement on the radio for all armies to lay down the weapons); *See also, S.* Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 67, ERN (En) 00898275 (a spokesman for the defeated Phnom Penh military command, General Mey Sichan, also came on the radio to appeal to all soldiers to surrender and to cooperate with the victors). According to HUN Chhunly, LON Non (brother of LON Nol) also made such announcement: T. 6 December 2012 (HUN Chhunly), p. 36.

[1367] *CPNLAF Representative Tells Government Troops To Surrender* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166974; *See also,* BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830 (after General MEY called on the LON Nol soldiers to surrender, the Khmer Rouge announced on the radio: "We did not come here to negotiate. We came by way of blood and sweat and the muzzle of a gun.").

surrender. Accordingly, the speaker called on "ministers and all other generals who have not run away, to immediately turn themselves over at the Information Ministry to help formulate measures to restore order" and declared that a committee composed of comrades of the united front and liberation front coming from countrywide to attend the meeting would shortly be set up.[1368]

463. By mid-morning Khmer Rouge troops had taken control of all of Phnom Penh.[1369]

10.2.3. *Mood in Phnom Penh and Announcement of the Evacuation*

464. For several hours, shortly after the entry of Khmer Rouge forces in the city began, soldiers dressed in black[1370] were saying "the war is over" and the population was happy that hostilities had ended.[1371] People took to the streets to celebrate and

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[1368] *Government Armed Forces Surrender Reported 17 Apr.* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166974-75.

[1369] *Cambodian Embassy in Bangkok Loses Contact with Phnom Penh* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166971 (a source, reporting information obtained from a Western embassy in Phnom Penh, said Red Khmer forces occupied virtually all of the city by 10 a.m.); *NUFC Radio on Phnom Penh Liberation, Occupation of U.S. Embassy* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166976 (the Voice of NUFC announced "In the morning of 17 April 1975, at 0930, we completely liberated Phnom Penh" and described how "their forces have occupied all important enemy positions in Phnom Penh", including Wat Phnom, Tuol Kork, the railway station and ministerial area south of it, Stung Meanchey radio station, the Kbal Thnal area, Chamcar Mon Palace, the U.S. Embassy, Boeung Kang Kang, General Staff headquarters, the area around Chroy Changvar and the western river bank); *NUFC Radio on 19 April Reports Cities Liberated* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166989 (declaring Phnom Penh 'liberated' by 9:30 a.m. on 17 April 1975).

[1370] The Chamber notes that the soldiers of Hem Dara's Nationalist Movement (MoNatio) were also present on the morning of 17 April 1975 and claimed responsibility for the capture of Phnom Penh. *See* Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 4, ERN (En) 00003277, (Fr) 00597831-32, (Kh) 00644702-03 (describing Hem Keth Dara, son of a Minister and purported commanding general of the nationalist movement that had "liberated" the city, who boasted of taking the city "with only 300 men"); *Cambodia's 'Purification'* (Newsweek), E3/4429, 19 May 1975, ERN (En) 00445259 (describing the "capture" of Phnom Penh by "200 ragtag troops" under the leadership of Hem Keth Dara); T. 28 January 2013 (Al ROCKOFF), p. 94 (had heard that Hem Dara and the Nationalist Movement were considered phoney Khmer Rouge).

[1371] T. 23 October 2012 (LAY Bony), p. 86; T. 28 January 2013 (Al ROCKOFF), pp. 19, 94; T. 29 January 2013 (Al ROCKOFF), p. 21; T. 8 October 2012 (MEAS Voeun), p. 12 (the Khmer Rouge soldiers told the civilians to be calm and not to worry as the fight was over); T. 20 June 2012 (YUN Kim), pp. 83-84; T. 5 December 2012 (PECH Srey Phal), p. 15; T. 24 April 2013 (CHUON Thi), pp. 47-48; T. 29 May 2013 (THOUCH Phandarasar), p. 4 (everyone was very joyful at the time because they thought the war was over); T. 29 May 2013 (HUO Chanthar), pp. 70-71 (they shouted that the war was over and that peace had come); T. 9 April 2013 (François PONCHAUD), p. 23-24 (Samdech HUOT Tat told the people that it was time and they had to join hands in rebuilding the country; and that they begged the victors not to engage in any further hostility. By ten o'clock, there was no more gunfire). *See also*, MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, p. 3, ERN (En) 00944522 (in front of Preah Angk Duong hospital the crowd shouted, "Bravo, peace! The war is ended!"); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (Khmer

congratulate the Khmer Rouge soldiers, believing peace would return to Cambodia.[1372] However, in the following hours the mood changed as the Khmer Rouge began to instruct the population to leave Phnom Penh immediately.[1373]

10.2.4. *Temporary Nature and Return 'in three days'*

465. The Khmer Rouge announced to the population that the evacuation was temporary, with most witnesses being told they needed only evacuate for three or more days, after which they could return home.[1374]

Rouge soldiers wearing black shouted, "Bravo!" to their victory); French Ministry of Foreign Affairs Telegram, Subject: Message for *Le Monde* Newspaper, E3/2696, 18 April 1975, ERN (En) 00486890; *Kyodo Writer Describe Phnom Penh After Surrender* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166976 (describing soldiers and people shaking hands and 'in each other's arms').

[1372] T. 23 November 2012 (CHAU Ny), p. 46 (people came to greet and congratulate them); T. 23 October 2012 (LAY Bony), p. 86; T. 24 October 2012 (LAY Bony), p. 21; T. 12 December 2012 (Denise AFFONÇO), pp. 68-69; T. 22 October 2012 (CHUM Sokha), pp. 34-36 (he stood along the road and waved a white flag to welcome the Khmer Rouge soldiers to Phnom Penh); T. 7 February 2013 (PIN Yathay), p. 15 (people were lining the streets to cheer the arrival of the soldiers); T. 27 May 2013 (YOS Phal), p. 103 (the population of Phnom Penh was cheering the victory of 17 April 1975); T. 4 December 2012 (TOENG Sokha), p. 58; T. 12 December 2012 (Denise AFFONÇO), p. 68.

[1373] T. 5 December 2012 (PECH Srey Phal), p. 17 (we were so happy in the morning, about 9 a.m., but by 3 p.m. the situation changed completely; we were shocked at the rapid change); T. 28 January 2013 (Al ROCKOFF), pp. 36, 94 (around midday the mood turned); T. 29 January 2013 (Al ROCKOFF), p. 21; T. 29 May 2013 (THOUCH Phandarasar), p. 4 (by the afternoon the Khmer Rouge told them they must leave Phnom Penh); T. 29 May 2013 (HUO Chanthar), p. 71 (the happiness of the people did not last long because the armed soldiers shouted at her and her neighbors to leave the city); T. 5 December 2012 (KIM Vanndy), pp. 85-86; T. 22 November 2012 (OR Ry), pp. 98-99; T. 5 November 2012 (SUM Chea), pp. 10, 49; T. 25 October 2012 (KUNG Kim), pp. 22-23; T. 12 December 2012 (Denise AFFONÇO), p. 101; T. 22 October 2012 (CHUM Sokha), pp. 36, 95 (at about 3 p.m. soldiers were announcing people had to leave immediately), 37 (they left at around 6:30 p.m.); T. 19 October 2012 (YIM Sovann), pp. 79-81 (Khmer Rouge soldiers instructed her father that he had 15 minutes to pack); T. 4 December 2012 (TOENG Sokha), pp. 39-40, 54; T. 31 May 2012 (SAKIM Lmut), p. 5; T. 6 November 2012 (MOM Sam Oeurn), pp. 7-8 (heard tanks enter the city in the morning and they had to leave home around 9 a.m.), 24 (soldiers entered her home around 7 a.m.), 46 (they left home at 9 a.m.); T. 23 November 2012 (CHAU Ny), pp. 47, 80 (heard this in the days after 17 April); T. 14 November 2012 (MEAS Saran), pp. 101-102 (at about 10 a.m. he learned from other hospital staff that soldiers were forcing them to leave the hospital quickly); T. 23 October 2012 (LAY Bony), pp. 86-89; T. 24 October 2012 (LAY Bony), p. 22; T. 9 April 2013 (François PONCHAUD), p. 24 (at 12:00 heard that the Khmer Rouge allowed the Cham people to leave the city so that they could return to their hometown); T. 6 June 2013 (Sydney SCHANBERG), pp. 13-14 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 63, ERN (En) 00898271, noting that within a few hours the mood completely changed; 65, ERN (En) 00898273, noting the same and that government soldiers, who had been embracing their conquerors a few hours before, are now shedding their uniforms in fear all over town).

[1374] T. 27 May 2013 (AUN Phally), pp. 43-44; T. 22 October 2012 (CHUM Sokha), p. 36; T. 19 October 2012 (YIM Sovann), p. 81; T. 23 October 2012 (LAY Bony), pp. 86-87; T. 24 October 2012 (LAY Bony), p. 23; T. 5 November 2012 (SUM Chea), p. 49; T. 14 November 2012 (MEAS Saran), pp. 109, 112-113; T. 22 November 2012 (MEAS Saran), pp. 9, 39, 76; T. 22 November 2012 (OR Ry), pp. 95, 99; T. 5 December 2012 (KIM Vanndy), pp. 85-86, 95; T. 12 December 2012 (Denise AFFONÇO), pp. 69, 111; T. 9 April 2013 (François PONCHAUD), p. 28; T. 10 April 2013 (François PONCHAUD), p. 12; T. 29 May 2013 (CHAN Socheat), pp. 42-43; T. 29 May 2013 (THOUCH

466. Advised to take little and believing they would return in three days, most left with few possessions.[1375] Most people gathered family members and took what little they could, such as money.[1376] Some were forced to leave without some or all their

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Phandarasar), pp. 4-5; T. 7 February 2013 (PIN Yathay), p. 19; T. 27 May 2013 (YOS Phal), pp. 72, 87; T. 4 June 2013 (BAY Sophany), pp. 8, 40, 43; T. 23 November 2012 (CHAU Ny), p. 47; T. 4 October 2012 (MEAS Voeun), pp. 16-17 (a Khmer Rouge commander, heard that the civilians would leave the town for about a week and then return when the town had been secured); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368; LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier stated Sary told them to say "these things" i.e. that they would return in a week, to the people they were going to evict); MAT Ly Civil Party Application, E3/4720, 3 January 2008, p. 6, ERN (En) 00436840 (the Angkar soldiers told them they would return in three days so they did not need to take many things); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (the soldiers announced that we would be back in a few days); LOENG Lenh Civil Party Application, E3/4956, 11 January 2010, pp. 5-6, ERN (En) 00842189-90; SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750; SAM Sak Civil Party Application, E3/5033, undated, p. 2, ERN (En) 00919929 (they could come back to their homes in Phnom Penh when it was ready); SAIDNATTAR Roshane Civil Party Application, E3/5076, 11 December 2009, p. 6, ERN (En) 00857597. *See also*, TEUNG Leap DC-Cam Interview, E3/5683, 13 February 2003, p. 1, ERN (En) 00184210 (a former Khmer Rouge soldier, stated combatants told evacuees that they were leaving temporarily, although Leap never heard that they were to be allowed back after three days); IENG Sary Interview by Stephen Heder, E3/89, 17 December 1996, pp. 5-6, ERN (En) 00417603-04 (IENG Sary stated that at the time it was thought some evacuees would be evacuated temporarily and some permanently; they were waiting to see how the people reacted and what the US would do); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 3, ERN (En) 00223335 (a former Khmer Rouge soldier, stated that Chea, Chairman of the 11th Battalion, told them to tell the population to leave for just three days); *U.S., Vietnam Aided 3 Coup Attempts, Cambodia Says* (Los Angeles Times), E3/622, 14 June 1978 (IENG Sary was quoted saying the evacuation was originally a temporary measure); *Sary: Empty Cities a Temporary Move* (Bangkok Post), E3/3322, 31 July 1978.

[1375] T. 5 December 2012 (KIM Vanndy), p. 97; T. 22 November 2012 (OR Ry), p. 100 (soldiers told her it was not necessary to bring utensils, that they could afford to buy stuff along the way, and it would be just heavy for them to bring it along as they only had to leave for three days); T. 12 December 2012 (Denise AFFONÇO), pp. 69-70, 111 (they were advised to take little; she took only half the provisions they needed but most of her valuable personal goods, including ID cards, her childrens' books, etc.); T. 14 November 2012 (MEAS Saran), pp. 109, 112 (believed they would only be gone for a few days); T. 29 May 2013 (CHHENG Eng Ly), pp. 92-93 (they had nothing except the clothes they were wearing); T. 7 February 2013 (PIN Yathay), p. 19 (was told that they would have to leave for three days and were advised not to take a lot of belongings because they would be returning to Phnom Penh); T. 5 December 2012 (PECH Srey Phal), p. 18 (packed only enough food and some clothes to enable them to survive the three days); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (some left without any food, others left half naked and some left without shoes in fear and tears).

[1376] T. 29 May 2013 (HUO Chanthar), p. 71 (some were carrying things on their shoulders and heads); T. 4 June 2013 (BAY Sophany), p. 8 (could not manage to carry many belongings as she had three children with her, but had some clothes and milk bottles for the children); T. 5 December 2012 (KIM Vanndy), pp. 86, 96; T. 23 October 2012 (LAY Bony), p. 87; T. 24 October 2012 (LAY Bony), p. 24 (did not bring rice as it was heavy, just riel, thinking it could be used along the way); T. 22 November 2012 (OR Ry), p. 100 (they left without bringing anything except money); T. 25 October 2012 (KUNG Kim), p. 51; T. 6 November 2012 (MOM Sam Oeurn), pp. 40-41; T. 29 May 2013 (THOUCH Phandarasar), pp. 5 (fearing losing her two children and two nephews in the masses, she tied them together and packed clothing, water and medicine); T. 29 May 2013 (THOUCH Phandarasar), 6 (children had to leave their parents behind); T. 22 October 2012 (CHUM Sokha), p. 98 (they were told to take the minimum because they'd be back in three days); T. 23 November 2012 (CHAU Ny), pp. 47, 49 (took her two nephews and a little belongings); CHEA Phan Interview Record, E3/5143, 12

family members.[1377]

467. According to two sources, some Khmer Rouge told people leaving the city or already on the road that they would never return.[1378]

10.2.5. *Claimed Security Concerns*

468. Khmer Rouge soldiers told the local population that they were being evacuated in order to protect them against anticipated further aerial bombardments by the U.S.A.[1379] Even residents who did not believe this explanation evacuated nonetheless

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December 2007, p. 3, ERN (En) 00223619 (the people leaving Phnom Penh were struggling to carry their belongings and crying after being separated from their parents and children).

[1377] T. 5 December 2012 (KIM Vanndy), p. 87 (witness' family and his uncle's family left separately); T. 5 December 2012 (PECH Srey Phal), pp. 16-17 (she left with very few family members and the Khmer Rouge would not let her wait until all members of her family were together); NOB Phany Victim Complaint, E3/5401, 24 October 2008, pp. 6-7, ERN (En) 00869788-89 (in her uncle's family there were 10 children and they could only take the smaller ones to Pursat, the others were separated from them); IM Nan Civil Party Application, E3/4735, 25 August 2008, p. 4, ERN (En) 00864119 (her and her husband were forced to leave without three of their children who were out at the time the soldiers came); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (had to leave without his parents); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (family members were separated at that time); TOP Ny Victim Complaint, E3/5452, 25 October 2009, p. 7, ERN (En) 00835299 (they did not allow her to travel to meet her parents); HIEK Naren Victim Complaint, E3/5376, 25 August 2008, p. 6, ERN (En) 00887745 (her parents and her uncle's family were separately evacuated); cf. T. 10 April 2013 (François PONCHAUD), p. 48 (heard from refugees that normally Angkar allowed family members to be together during evacuation).

[1378] U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, para. 2, ERN (En) 00495557 (reporting that an evacuee stated Khmer Communists "insisted that the marchers had 'no hope' of ever returning to Phnom Penh" although it is not clear when this was stated); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, p. 3, ERN (En) 00156847 (at Monivong bridge, while evacuating, the soldiers said all brothers and sisters were being taken to rice paddies, and "don't hope that you can return, Angkar takes you for tempering").

[1379] T. 19 October 2012 (YIM Sovann), pp. 80-81, 90; T. 28 May 2012 (NY Kan), p. 24; T. 22 October 2012 (CHUM Sokha), p. 36; T. 23 October 2012 (LAY Bony), pp. 86-87; T. 24 October 2012 (LAY Bony), pp. 25, 51; T. 6 November 2012 (MOM Sam Oeurn), pp. 7, 10, 38-41; T. 14 November 2012 (MEAS Saran), pp. 100-101, 105, 107-108, 113; T. 22 November 2012 (MEAS Saran), pp. 9, 39, 75; T. 23 November 2012 (CHAU Ny), p. 47; T. 5 December 2012 (PECH Srey Phal), pp. 15-16; T. 12 December 2012 (Denise AFFONÇO), pp. 69, 101-102; T. 29 May 2013 (THOUCH Phandarasar), p. 4; T. 29 May 2013 (CHAN Socheat), pp. 42-43; T. 29 May 2013 (CHHENG Eng Ly), pp. 105-106; T. 7 February 2013 (PIN Yathay), p. 19; T. 27 May 2013 (YOS Phal), p. 105; T. 4 June 2013 (BAY Sophany), pp. 8, 40, 43; T. 28 January 2013 (Al ROCKOFF), p. 36 (the word being put out by cadre with loudspeakers was that the Americans were going to bomb); T. 29 January 2013 (Al ROCKOFF), p. 13; T. 9 April 2013 (François PONCHAUD), pp. 24, 28; T. 10 April 2013 (François PONCHAUD), p. 12; T. 5 December 2012 (KIM Vanndy), pp. 85-86; T. 30 April 2012 (SALOTH Ban), p. 68 (SALOTH Ban, a nephew of POL Pot, heard that the USA had a "defeat plan", which he later understood meant that the USA would bombard Phnom Penh); T. 2 August 2012 (SUONG Sikoeun), p. 99 (heard that the purpose of the evacuation was, inter alia, to secure Phnom Penh from American bombing). *See also*, French Ministry of Foreign Affairs Incoming Telegram, Subject: Situation in Phnom Penh - 21h00, E3/2688, 17 April 1975 (reporting that FUNK Soldiers had come through the main streets of the capital and declared that the city risked being flattened by bombing); François

in the face of threats by Khmer Rouge soldiers.[1380]

469. Yet other residents were told the evacuation was for their public safety as Angkar needed to 'sweep' or 'clean' the remaining enemies from the city, organise the city, or disperse the enemy's spy network, which allegedly included American imperialist spies in Phnom Penh.[1381]

BIZOT Interview Record, E3/5137, 22 January 2008, ERN (En) 00233536; UM Keo Interview Record, E3/5173, 8 May 2008, p. 2, ERN (En) 00272659; CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 2, ERN (En) 00274679; MIECH Ponn Interview Record, E3/5523, 9 December 2009, p. 2, ERN (En) 00434650; KEV Chhem Vicim Complaint, E3/5407, 22 October 2008, p. 6, ERN (En) 00828255; SUN Dara Victim Complaint, E3/5428, 20 April 2009, p. 6, ERN (En) 00873851; LAY Sintho Civil Party Application, E3/4774, 3 October 2008, p. 3, ERN (En) 00850912; CHHUM Mao Supplementary Information, E3/4955, 5 April 2010; SENG Mardi Interview Record, E3/5613, 26 March 2010, p. 5, ERN (En) 00494401; PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370; NEANG Soeun Civil Party Application, E3/4841, undated, pp. 1-2, ERN (En) 00893377-78; MAO Kim Sophie Civil Party Application, E3/5077, 26 November 2009, p. 5, ERN (En) 00858023; KEO Nicholas Vesna Civil Party Application, E3/5088, undated, p. 9, ERN (En) 00569592; SO Kelvin Leng Civil Party Application, E3/5092, undated, p. 5, ERN (En) 00569722; KHOEM Tin Victim Complaint, E3/5404, 22 October 2008, p. 6, ERN (En) 00869795; TOCH Monin Civil Party Application, E3/4668, 20 January 2008, p. 3, ERN (En) 00238410; NEANG Muong Sokhon Civil Party Application, E3/4681, 30 May 2008, p. 6, ERN (En) 00850906; KHOEM Naret Civil Party Application, E3/4687, 12 May 2008, p. 3, ERN (En) 00375736; SOT Sem Civil Party Application, E3/4689, 19 December 2007, p. 8, ERN (En) 00446581; SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895; MEAS Mut Civil Party Application, E3/4703, 22 April 2008, p. 7, ERN (En) 00417844; BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830; SUN Henri Victim Complaint, E3/5457, 20 September 2009, p. 6, ERN (En) 00474753; KEO Sarun Victim Complaint, E3/5458, 25 October 2009, p. 39, ERN (En) 00475360.

[1380] T. 7 February 2013 (PIN Yathay), p. 19 (he was not convinced that bombs would be dropped given the Americans had left the city and country in early April); T. 6 November 2012 (MOM Sam Oeurn), pp. 40-41 (was not persuaded such bombs would begin any time soon because she believed the war was over); T. 22 October 2012 (CHUM Sokha), p. 98 (he and his family did not believe the threat was credible as the United States had recently dropped food for people encircled by the Khmer Rouge on the outskirts of Phnom Penh and he did not believe the United States would then bomb the city); François BIZOT Interview Record, E3/5137, 22 January 2008, ERN (En) 00233536 (they heard that the Americans would bombard the city, but no one believed that). *See also*, Section 10: Movement of the Population (Phase One), paras 471-475, below.

[1381] T. 22 November 2012 (OR Ry), p. 98; T. 23 November 2012 (OR Ry), p. 5 (the soldiers told them to leave because they had to cleanse the city); T. 4 December 2012 (TOENG Sokha), pp. 54-55 (they had to empty the city to check every last enemy and the public shouldn't mix with enemies); T. 5 December 2012 (KIM Vanndy), p. 95 (the city was being cleaned of or emptied of the enemies. At that time, he did not understand the term 'enemies'); T. 29 May 2013 (CHAN Socheat), p. 42 (Khmer Rouge soldiers told her they needed to leave their house so the Khmer Rouge could get rid of the enemy); T. 29 May 2013 (THOUCH Phandarasar), p. 4 (Khmer Rouge told them they must leave Phnom Penh long enough for the government to clean the city); T. 29 May 2013 (HUO Chanthar), p. 71 (the soldiers shouted to her and her neighbors that they must leave the city as the soldiers needed to sweep clean the city for three days); T. 7 February 2013 (PIN Yathay), p. 19 (Angkar needed to clean up the city); T. 22 October 2012 (CHUM Sokha), p. 36 (a former LON Nol soldier, stated the Khmer Rouge announced that they had to cleanse the remaining enemies from the city); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (so that they could clean up the city); CHEY Yeun Civil Party Application, E3/4824, undated, p. 2, ERN (En) 00891213 (they evacuated people to purge enemies from the city); NORNG Saran Civil Party Application, E3/4653, 25 February 2009, p. 3, ERN (En) 00864058 (young children wearing black clothes told them Angkar had

470. Numerous divisions took part in evacuating Phnom Penh.[1382] Some Khmer Rouge units were tasked with evicting people from their homes, while others were

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to purge the city); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (must leave their homes in order to manage and destroy the enemy); MAT Ly Civil Party Application, E3/4720, 3 January 2008, p. 6, ERN (En) 00436840 (the Angkar soldiers told them they needed to leave as Angkar needs to sweep clean the enemy); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, p. 3, ERN (En) 00156847 (they said that Angkar had people leave so that they can purge all the insider enemies); CHAN Sinang Civil Party Application, E3/4697, 13 August 2008, p. 3, ERN (En) 00402948 (people had to leave so that Angkar would sweep clean the enemy); SENG Sokhom Civil Party Application, E3/4702, 20 May 2008, p. 7, ERN (En) 00417836 (Angkar said they wanted to clean the enemies); PUT Pum Civil Party Application, E3/4714, 27 July 2008, p. 4, ERN (En) 00434305 (were told Angkar needed to clean the capital and completely eradicate the enemy burrowing from inside); KHUT Chea Victim Complaint, E3/5438, 2 October 2008, p. 6, ERN (En) 00873003 (Angkar needed to manage the city and destroy their enemies). *See also, Cambodian CP Officially Unveiled on Founding Anniversary* (in FBIS Collection), E3/2678, 6 October 1977, ERN (En) 00389469 (citing POL Pot's 2 October 1977 statement that the city's evacuation aimed to break up "spy organizations"); T. 7 June 2013 (Sydney SCHANBERG), pp. 9-10 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 75, ERN (En) 00898283, noting that those in the embassy hypothesised that the evacuation was intended, among other reasons, to clean out possible pockets of armed resistance and to search for government officials who had gone into hiding).
Some were told that the Khmer Rouge were 're-organising the city': T. 27 May 2013 (YOS Phal), pp. 72, 105; T. 30 May 2013 (PO Dina), p. 96; T. 5 December 2012 (PECH Srey Phal), p. 15; SOURN Sopha Civil Party Application, E3/4837, undated, p. 2, ERN (En) 00891225; YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677; SAM Sak Civil Party Application, E3/5033, undated, p. 2, ERN (En) 00919929 (Angkar needed to clean up and reorganize the city); HUL Peou Civil Party Application, E3/4696, 25 June 2008, p. 4, ERN (En) 00404243; SUM Sokh Victim Complaint, E3/5470, 2 October 2008, p. 20, ERN (En) 00823252.
This was confirmed by numerous former Khmer Rouge soldiers: T. 2 August 2012 (SUONG Sikoeun), pp. 99-100; T. 6 August 2012 (SUONG Sikoeun), pp. 6, 9 (a former Khmer Rouge soldier, stated Phnom Penh was also emptied to disperse its spy network); T. 10 January 2013 (UNG Ren), pp. 51, 54 (a soldier, learned that one reason the commanders gave the evacuation order was because they were afraid that enemies would be embedded among the population and that people would hide the enemy); T. 2 May 2012 (PEAN Khean), p. 67 (a Khmer Rouge messenger, understood that people had to leave the city because it was easier to "cleanse the enemies," whom he understood to be people from the LON Nol regime, as well as the CIA); T. 11 January 2013 (CHHAOM Se), p. 64 (a Khmer Rouge soldier, the soldiers were told that even if the enemies were defeated there were still pockets of enemies in Phnom Penh); TEUNG Leap DC-Cam Interview, E3/5683, 13 February 2003, p. 1, ERN (En) 00184210 (a former Khmer Rouge soldier, he was told by his battalion superiors that the plan was to get the people beyond the city limits, so that the urban areas could be reorganized, cleared of enemies to establish security, and cleaned up, after which the population would return); PHUY Pok Victim Complaint, E3/5167, undated, p. 6, 00219002 (a former Khmer Rouge soldier stated that from the orders of three Chiefs, he knew that the reasons for the evacuations were to find hidden enemies who had secreted themselves inside the society and for the Khmer Rouge to re-organise the whole city).
Regarding the allegation that the enemy allegedly included American imperialist spies: T. 23 April 2012 (SALOTH Ban), pp. 45-46; T. 30 April 2012 (SALOTH Ban), p. 68. KLAN Fit was told that Phnom Penh was evacuated because it was at danger of being attacked by the Vietnamese: T. 10 January 2012 (KLAN Fit), pp. 108-109. *See also*, T. 7 February 2013 (PIN Yathay), pp. 52-53 (citing Book by P. Yathay: *Stay Alive, My Son*, E3/3988, ERN (En) 00587602-03, he was told by MITH Pech, a highly ranked Khmer Rouge officer in the provincial hierarchy, that Phnom Penh was evacuated to track down the seeds of counter-revolution, destroy any resistance, and to destroy the cradles of reactionary and mercantile capitalism).

[1382] KAING Guek Eav Interview Record, E3/394, 22 October 2009, pp. 6-7, ERN (En) 00398233-34 (troops from the East Zone, the former North Zone, the Special Zone and the Southwest Zone, evacuated the city immediately after 17 April); SUM Chea Interview Record, E3/3961, 6 March 2008, pp. 2-3, ERN (En) 00223345-46 (part of the North Zone army, he was involved in the 17 April evacuation); PHACH Siek Interview Record, E3/5165, 1 April 2008, p. 6, ERN (En) 00195392 (a

charged with monitoring the evacuation or looting in the city.[1383] According to Witness ROCHEOM Ton who had guarded the April 1975 meeting at which the plan to evacuate Phnom Penh was discussed,[1384] the evacuation was to be carried out within one week.[1385]

10.2.6. *Evacuation "using any means"*

471. Witness SUM Chea, a Khmer Rouge soldier involved in evacuating the population, received orders from Bong Hak, the head of his battalion,[1386] to evacuate the population.[1387] According to SUM Chea, Bong Hak said that without mistreating some of the people, they would not manage to empty the city of its population.[1388] Groups designated to force civilians out had to resort to whatever means possible to

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soldier in the 1st Division, she received orders from Commander Oeun to evacuate the people); KOY Mon Interview Record, E3/369, 29 May 2008, p. 7, ERN (En) 00272719 (Southwest Zone forces began to evacuate people from Phnom Penh); SRENG Thi Interview Record, E3/5263, 6 January 2009, pp. 2-3, ERN (En) 00282223-24 (a combatant in the Special Military Zone, he was ordered to evacuate people from Phnom Penh).

[1383] T. 24 October 2012 (KUNG Kim), pp. 86-88, 106-107; T. 25 October 2012 (KUNG Kim), pp. 57-58 (his own unit was not tasked with evacuating in the first three days, that was the task of a specialist unit); T. 8 April 2013 (CHHAOM Se), pp. 37-38 (forces stationed outside the city were tasked with the evacuation, other divisions were in charge of monitoring); T. 20 September 2012 (CHEA Say), pp. 44-49 (a former Khmer Rouge soldier who had received orders to evacuate people, was not engaged in evicting people from their homes, rather, he was charged with escorting civilians by boat to Kampong Cham); UM Keo Interview Record, E3/5173, 8 May 2008, p. 3, ERN (En) 00272660 (his unit did not participate in the evacuation of people; it stayed in place among the houses, and he helped treat wounded soldiers); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384414 (a former Khmer Rouge soldier, was assigned to collect war booty from vacant houses); UO Leang DC-Cam Interview Transcript, E3/5685, 17 September 2004, p. 11, ERN (En) 00876451 (a former Khmer Rouge soldier involved in the evacuation, was assigned to clean out houses block by block and collect possessions block by block and store them at a specific location; important items were retained in warehouses); CHIN Mat Civil Party Application, E3/4717, 15 December 2008, p. 6, ERN (En) 00476122 (a former Khmer Rouge soldier, stated female units were sent to people's houses to collect spoils of war which were stored in warehouses or houses of high profile leaders); VUNG Vei DC-Cam Statement, E3/5686, 18 January 2005, pp. 13-14, ERN (En) 00874660-61 (a former Khmer Rouge soldier involved in the evacuation, stated they divided the responsibilities of evacuating people to different targets).

[1384] T. 26 July 2012 (ROCHOEM Ton), p. 13 (he was able to listen to the meeting because he was a guard during this meeting). *See* Section 3: Historical Background, paras 144-147.

[1385] T. 31 July 2012 (ROCHOEM Ton), p. 19. *See also*, LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier stated that Sary, his superior, (not IENG Sary) ordered them to evacuate the civilians in a week).

[1386] T. 5 November 2012 (SUM Chea), pp. 11, 12 (but did not know who gave the order to Hak to carry out the activity), 15 (referring to Brother Hak).

[1387] T. 5 November 2012 (SUM Chea), pp. 12, 15, 25.

[1388] T. 5 November 2012 (SUM Chea), p. 25.

ensure the latter's departure.[1389] Although he claimed his division did not mistreat people,[1390] he knew from Hak that other soldiers resorted to measures such as forcing people out at gunpoint, firing their guns, beating and mistreating civilians who refused to go and, in the worst cases, shooting them.[1391] Another former Khmer Rouge soldier stated she received orders from her supervisor to throw residents and their belongings out of their houses if people did not want to leave.[1392] Numerous witnesses testified that, following these instructions, over the course of 17 April and the ensuing days[1393] armed Khmer Rouge soldiers entered people's homes and even pagodas, and forced people out at gunpoint.[1394] Civil Party MOM Sam Ouern was in her house when she

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[1389] T. 5 November 2012 (SUM Chea), p. 14 (there were groups designated to force the people and they had to resort to whatever means possible, harsh measures, to ensure that all people left the city quickly).

[1390] T. 5 November 2012 (SUM Chea), pp. 13, 15, 24-25 (although also tasked with evacuating people from Phsar Thmei (central market) and Chroy Changvar, his division did not mistreat people and they were evacuated easily).

[1391] T. 5 November 2012 (SUM Chea), pp. 13 (*citing* SUM Chea Interview Record, E3/3961, ERN (En) 00223346), 24-25 (Bong Hak told him that other groups had engaged in mistreatment).

[1392] LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416.

[1393] T. 30 May 2013 (PO Dina), pp. 96, 115 (Khmer Rouge forces returned to her house at 8 p.m. that night threatening them to leave immediately); T. 12 December 2012 (Denise AFFONÇO), p. 69 (stated there was no evacuation on 17 April 1975, rather they were ordered out of their homes the following day); T. 7 February 2013 (PIN Yathay), pp. 19-22, 86-87 (on 17 April they left for Ounalom Pagoda; they were again forced to move on the next day, 18 April, when the Khmer Rouge soldiers arrived at Ounalom Pagoda. PIN and his family left on the morning of 18 April but stopped at the Faculty of Law for three days; they were moved on by Khmer Rouge soldiers on the fourth day); T. 23 November 2012 (CHAU Ny), p. 47 (Khmer Rouge announced people had to leave Phnom Penh two or three days after 17 April); YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (they started to evacuate people three days after 17 April).

[1394] T. 29 May 2013 (CHAN Socheat), p. 42 (at about 9 a.m. on 17 April 1975 the Khmer Rouge soldiers with weapons entered her house and told her and her family they needed to leave their house); T. 27 May 2013 (SOU Sotheavy), pp. 11, 14-15 (was forced to leave Phnom Penh at gunpoint by Khmer Rouge soldiers); T. 27 May 2013 (AUN Phally), pp. 48-49 (saw his family members forced out from the third story of the building at gunpoint); T. 30 May 2013 (PO Dina), pp. 95, 113 (Khmer Rouge forces armed with rifles entered their home and started destroying items in the home); T. 19 October 2012 (YIM Sovann), p. 80 (the Khmer Rouge soldiers that came to her house, men and women, were all fully armed); CHAU Ny Civil Party Application, E3/3969, 20 September 2008, p. 6, ERN (En) 00478480 (two of the soldiers who were carrying guns pointed at the family members to leave the house); SUN Dara Victim Complaint, E3/5428, 20 April 2009, p. 6, ERN (En) 00873851 (three soldiers equipped with AK47 rifles opened fire to threaten his father; they pointed their rifles at his father and said they would have to leave); Civil Party HONG Savat Interview Record, E3/5591, 18 December 2009, p. 3, ERN (En) 00426487 (when the Khmer Rouge arrived at her home, they pointed guns at them and handcuffed her father); VA Buntha Civil Party Application, E3/4827, undated, p. 2, ERN (En) 00893358 (the Khmer Rouge soldiers, each of them holding a rifle, threatened her family and ordered them to leave); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (the Khmer Rouge used rifles to force them to leave their homes); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (when they opened their door, the Khmer Rouge pointed a gun at them and told them to leave); SEN Phap Victim Complaint, E3/5391, 19 November 2008, p. 6, ERN (En) 00869808 (more than 10 Khmer Rouge soldiers armed with AK rifles forced her family out of the pagoda at gunpoint); PREAB Ken Victim Complaint, E3/5406, 22 October 2008, p. 6, ERN (En) 00749400 (were threatened at gunpoint); TOCH Monin

was ordered to evacuate by a member of the Khmer Rouge holding her at gunpoint.[1395] Similarly, Civil Party CHHENG Eng Ly's mother and the other elderly of the city were forced to evacuate at gunpoint.[1396]

472. Numerous witnesses, civil parties and victims recounted how soldiers were aggressive and shouted at members of the population or fired shots in the air to urge the population to leave their homes and move.[1397] Two former Khmer Rouge soldiers

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Civil Party Application, E3/4668, 20 January 2008, p. 3, ERN (En) 00238410 (everyone was evacuated from their houses in Tuol Kork and forced to march at gunpoint by the Khmer Rouge soldiers); NEANG Muong Sokhon Civil Party Application, E3/4681, 30 May 2008, p. 6, ERN (En) 00850906 (they were chased out of Phnom Penh at the barrel of the gun); CHUON Sam Civil Party Application, E3/4707, 23 December 2008, p. 4, ERN (En) 00417897 (the Khmer Rouge soldiers pointed their guns at his family members); SVAY Neth Civil Party Application, E3/4722, 10 September 2008, p. 5, ERN (En) 00463052 (shooting and pointing guns, they forced all people including her family to leave); SUN Henri Victim Complaint, E3/5457, 20 September 2009, ERN (En) 00474753 (Khmer Rouge soldiers forced them to leave at gunpoint); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, p. 3, ERN (En) 00156847 (left the city under threat by the Khmer Rouge soldiers with guns); EM Phoeung Interview Record, E3/5133, 19 November 2007, pp. 2-3, ERN (En) 00223198-99 (the Khmer Rouge soldiers entered the pagoda pointing their guns at them).

[1395] T. 6 November 2012 (MOM Sam Oeurn), pp. 7-9 (pointed a gun at her and was forced to leave; they were using harsh words), 23-24, 28 (when we reached any particular house, the soldiers would be pointing the guns at the people in the house to come down and join the march, join the crowds or they would be shot), 38-39, 42 (went to her safe to reach for her valuables and before she knew what was happening, a member of the Khmer Rouge was holding her at gunpoint).

[1396] T. 29 May 2013 (CHHENG Eng Ly), p. 106.

[1397] Were shouting and aggressive: T. 5 December 2012 (KIM Vanndy), p. 88 (shouted at them); T. 29 May 2013 (THOUCH Phandarasar), pp. 4-5 (other soldiers returned and became very aggressive, demanding that they leave); CHHENG Eng Ly Civil Party Application, E3/5736, 7 January 2010, p. 7, ERN (En) 00922084 (the Khmer Rouge shouted insults at them and made rude comments that she dared not repeat); SENG Sokhom Civil Party Application, E3/4702, 20 May 2008, p. 7, ERN (En) 00417836 (the armed Khmer Rouge soldiers shouted at his family and others who were leaving Phnom Penh).

Threatened them with shots: T. 5 December 2012 (KIM Vanndy), p. 87 (shots were fired into the air to disperse a group of people who were gathering and they were urged to move); T. 27 May 2013 (SOU Sotheavy), pp. 28-30 (heard Khmer Rouge soldiers fire shots from within her house); T. 27 May 2013 (AUN Phally), p. 34 (saw Khmer Rouge soldiers shoot guns into the air in order to force people to move down onto the ground floor; anyone who protested was forced down at gunpoint); T. 27 May 2013 (YOS Phal), p. 87 (at Chen Dam Dek Pagoda, at about 2.30 p.m., they were surrounded by armed Khmer Rouge soldiers who fired into the air and asked them to leave the place for three days); T. 29 May 2013 (HUO Chanthar), p. 71 (the Khmer Rouge fired some shots into the air to threaten them); T. 4 June 2013 (BAY Sophany), pp. 7-8, 40-43 (they fired shots in the air to chase people to leave their houses and Phnom Penh); T. 24 October 2012 (LAY Bony), p. 26; PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (described a group of soldiers in black uniforms with one leg of their pants rolled up, who were shooting B40s in the neighborhood, and another group of Khmer Rouge threatening people and telling them to walk only on the boulevard and firing their guns just above people's heads); MIECH Ponn Interview Record, E3/5523, 9 December 2009, p. 2, ERN (En) 00434650 (they were shooting and spraying into the air to threaten the people); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, p. 7, ERN (En) 00873844 (they opened fire in the air while making the announcement); Civil Party SOU Sotheavy Interview Record, E3/4608, 13 October 2009, p. 3, ERN (En) 00426416 (on 17 April 1975 the Khmer Rouge arrived at Olympic Stadium and ordered people to leave their rooms; the Khmer Rouge soldiers fired into a room where four people did not follow their order); YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p.

involved in the evacuation confirmed that soldiers forcibly expelled residents and their belongings out of their houses.[1398] Moreover, Sydney SCHANBERG described how teams of shouting and armed Khmer Rouge soldiers fired shots in the air to demonstrate they meant business when families moved too slowly for the insurgents' taste.[1399]

473. Evacuees were also subjected to physical abuse: Civil Party PO Dina recounted how armed Khmer Rouge forces tied up, beat and kicked her husband, while Civil Party PECH Srey Phal saw that those who protested against leaving were beaten with gun butts.[1400]

474. Khmer Rouge soldiers also threatened to kill those who refused to follow their instructions and leave.[1401] Numerous civil parties and victims recounted how those

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6, ERN (En) 00873677 (they opened fire almost everywhere to threaten the people); SEN Phap Victim Complaint, E3/5391, 19 November 2008, p. 6, ERN (En) 00869808 (they shot in the air to frighten them); Refugee Accounts, E3/4590, p. 38, ERN (En) 00820356 (the Khmer Rouge fired shots in the air, it was forbidden to tum back; many people started to swim, but the Khmer Rouge shot at them; the row of houses along the river and the market at Kbal Thnal were burned down); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, p. 7, ERN (En) 00873844 (Khmer Rouge troops made an announcement ordering them to leave quickly and the troops opened fire in the air while they were making the announcement; all of them were terrified).

[1398] LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier, stated she received the order from her supervisor that if people did not want to leave, the soldiers were to throw their belongings and them out of the houses); T. 24 October 2012 (KUNG Kim), pp. 107-108 (a former Khmer Rouge, he was responsible for dragging resisters out of their houses).

[1399] T. 5 June 2013 (Sydney SCHANBERG), pp. 6-7 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 71, ERN (En) 00898279).

[1400] T. 30 May 2013 (PO Dina), pp. 95, 113-114 (Khmer Rouge forces armed with rifles entered their home and tied up and beat and kicked her husband); T. 5 December 2012 (PECH Srey Phal), pp. 17, 69 (saw near Khleang Rumsev market that those that protested leaving were beaten with gun butts). *See also*, Civil Party HONG Savat Interview Record, E3/5591, 18 December 2009, p. 3, ERN (En) 00426487 (the Khmer Rouge threatened her family and hit her father who tried to resist them).

[1401] T. 5 December 2012 (PECH Srey Phal), p. 16 (Khmer Rouge threatened that if they returned and found the civil party in the same place they'd be in big trouble; when they returned they told us we'd risk being shot at); T. 22 November 2012 (OR Ry), p. 99 (threatened to kill anyone who did not want to leave); T. 19 October 2012 (YIM Sovann), pp. 90-91 (Khmer Rouge soldiers told her father he would be shot to death if he refused to leave); T. 27 May 2013 (AUN Phally), p. 44 (was told by Khmer Rouge soldiers that people who did not obey instructions would be shot); T. 27 May 2013 (SOU Sotheavy), p. 14 (the Khmer Rouge were armed and threatened all the people at gunpoint and if anyone resisted they would risk being shot at; we were very frightened); T. 30 May 2013 (PO Dina), p. 96 (after begging with Khmer Rouge forces to let them leave the following morning, the soldiers warned them that if they failed to leave immediately they would destroy everything, and threatened their lives); CHHENG Eng Ly Civil Party Application, E3/5736, 7 January 2010, p. 7, ERN (En) 00922084 (the Khmer Rouge threatened to kill them if they did not obey orders); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (her and her husband were threatened by the Khmer Rouge when they looked back at their house telling them to continue walking, or they would be killed); KUNG Narin Civil Party Application, E3/4773, undated, p. 2, ERN (En) 00890598 (during the evacuation, the Khmer Rouge troops threatened that if someone refused to leave,

who did not immediately obey were shot and killed on the spot.[1402] In particular, Civil Party Denise AFFONÇO described how a school friend of hers who stayed to wait for

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he/she would be killed, and this was Angkar's order); SONG Meng Interview Record, E3/5142, 12 December 2007, ERN (En) 00223615 (he saw and heard soldiers saying to leave Phnom Penh for three days and that anyone refusing to leave would be killed); CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 2, ERN (En) 00274679 (the Khmer Rouge threatened to smash those who did not obey); KEV Kin Interview Record, E3/5273, 12 February 2009, p. 3, ERN (En) 00290499 (a former Khmer Rouge soldier, he heard Khmer Rouge soldiers telling the people they would smash those who did not listen to them); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (the soldiers said that if anyone did not follow their order, the soldiers would shoot that person dead); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 3, ERN (En) 00399168 (some of the troops were walking around the houses threatening people to leave); SOTH Navy Civil Party Application, E3/4921, 23 June 2009, p. 5, ERN (En) 00858006 (threatening any remaining family and forcing them to leave hastily); SOURN Sopha Civil Party Application, E3/4837, undated, p. 2, ERN (En) 00891225 (Khmer Rouge soldiers, holding guns, threatened to kill us if we did not move); YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (threatened that anyone who dared defy their orders to leave would be shot dead); NGOUN Tin Civil Party Application, E3/5004, 19 July 2009, p. 3, ERN (En) 00871742 (soldiers threatened to kill his parents); SEN Phap Victim Complaint, E3/5391, 19 November 2008, p. 6, ERN (En) 00869808 (they announced that any family that resisted *Angkar*'s orders must be the enemy or CIA spies, and must be killed); KHOEM Tin Victim Complaint, E3/5404, 22 October 2008, p. 6, ERN (En) 00869795 (people had to evacuate the city and they would be shot dead should they defy the order); TOP Ny Victim Complaint, E3/5452, 25 October 2009, p. 9, ERN (En) 00835301 (was forced to leave her house in Phnom Penh by threat of being killed); CHAN Sinang Civil Party Application, E3/4697, 13 August 2008, p. 3, ERN (En) 00402948 (if anyone refused to leave, the Khmer Rouge soldiers would shoot them dead and accused them of being the enemy of Angkar); Civil Party SENG Chon Interview Record, E3/5562, 16 October 2009, p. 3, ERN (En) 00400454 (if anyone refused to leave or returned to their houses, the Khmer Rouge would shoot them dead, although he did not witness any shooting).

[1402] *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 21, ERN (En) 00087557 (PAM Moeun, a LON Nol lieutenant, stated people who did not want to leave their homes or who returned were killed); SOT Sem Civil Party Application, E3/4689, 19 December 2007, p. 8, ERN (En) 00446581 (they were ordered to take National Road No. 1 and those who resisted would be shot dead); POK Sa Em Civil Party Application, E3/4724, 8 December 2008, p. 3, ERN (En) 00487675 (those who protested orders to leave were killed by gun shots); SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178 (anyone who dared argue against the order was killed); MEA Chhin Civil Party Application, E3/4680, 21 May 2008, p. 6, ERN (En) 00885702 (the Khmer Rouge fired at anyone who refused to leave); SEN Sophon Civil Party Application, E3/4821, undated, p. 2, ERN (En) 00916889 (people who tried to fight with the Khmer Rouge were shot and killed like animals); CHEY Yeun Civil Party Application, E3/4824, undated, p. 2, ERN (En) 00891213 (some people were killed in their houses because they would not leave as ordered); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (those who were not willing to leave or were hesitant to leave were killed immediately); YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (they shot dead members of her neighbours' families); EAM Teang Victim Complaint, E3/5482, 3 February 2010, p. 7, ERN (En) 00824222 (soldiers shot people to death when they requested to wait for their family to leave altogether); MEAS Mut Civil Party Application, E3/4703, 22 April 2008, p. 7, ERN (En) 00417844 (Khmer Rouge soldiers killed a family who refused to leave as they did not want to leave their belongings); BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830 (those who did not leave in time or transported their belongings in cars or remork trailers were killed by the Khmer Rouge); Refugee Accounts, E3/4590, pp. 132, ERN (En) 00820450 (a law student, stated that all those who do not comply with the orders were immediately killed, orders were not repeated twice), 250, ERN (En) 00820568 (some people gave up their belongings willingly, those who hesitated were shot right away); KHOEM Naret Civil Party Application, E3/4687, 12 May 2008, p. 3, ERN (En) 00375736 (his family chose to leave after learning another family who refused had been shot); KHOEM Nareth Interview Record, E3/1747, 16 July 2008, p. 3, ERN (En) 00243009 (was told that those who refused to leave were shot dead); *cf.* MEAS Voeun

her husband was killed on the spot, and Civil Party PIN Yathay recounted how a soldier had shot a boy who had sought to return home to collect something, stating "this is what happens to recalcitrants".[1403] The written eyewitness accounts of other individuals also tell of such killings.[1404] That those who resisted the evacuation were shot was further corroborated by SUM Chea, a Khmer Rouge soldier.[1405]

475. Some people stated that that they did not see any resistance to the orders or subsequent violence.[1406] Indeed, many evacuees, having noted that the soldiers were

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Interview Record, E3/424, 16 December 2009, p. 4, ERN (En) 00421071 (a former Khmer Rouge soldier, stated there was no instruction from the Khmer Rouge upper echelon to shoot those people who refused to leave).

[1403] T. 12 December 2012 (Denise AFFONÇO), p. 71; T. 7 February 2013 (PIN Yathay), p. 51 (citing Book by P. Yathay: *Stay Alive, My Son*, E3/3988, ERN (En) 00587560).

[1404] French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, pp. 3, ERN (En) 00517765 (Brigadier-General SOR Buon stated that those who challenged, even passively, evacuation orders were gunned down after two warnings, and he personally witnessed this when someone refused to leave his home three times in a row), 5, 00517767 (describing spur of the moment executions as soon as Phnom Penh was captured); HUM Ponak Civil Party Application, E3/4759, 10 January 2010, p. 1, ERN (En) 00887719 (saw people who opposed orders killed in front of her); Civil Party SOT Sem Interview Record, E3/4654, 15 October 2009, pp. 3-4, ERN (En) 00400463-64 (saw the Khmer Rouge soldiers shoot a few people dead, they were likely house owners who refused to leave their houses); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 3, ERN (En) 00399168 (saw people shot to death because they were hesitating and did not know which route to take); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (saw that anyone who opposed the forced evacuation was immediately shot dead); PHUONG Mom Victim Complaint, E3/5416, 29 October 2008, p. 6, ERN (En) 00869941 (saw that those who did not agree to leave their home or wanted to wait for relatives were immediately killed by the Khmer Rouge, sometimes they killed the whole family); SUN Henri Victim Complaint, E3/5457, 20 September 2009, ERN (En) 00474753-54 (the former director general of the Treasury Department, stated anyone who looked back or argued would be shot; saw the Khmer Rouge use rocket launchers to blast down doors and kill everyone who remained in their homes).

[1405] T. 5 November 2012 (SUM Chea), p. 24 (people who resisted evacuation were shot; indeed, other groups of Khmer Rouge soldiers shot and killed a few people to scare the hell out of other people).

[1406] T. 8 April 2013 (CHHAOM Se), pp. 35-37 (his unit faced no resistance from the population); T. 28 January 2013 (Al ROCKOFF), pp. 45-46 (did not see force used against people who were leaving the city, although he heard a number of accounts at the French Embassy); T. 9 April 2013 (François PONCHAUD), pp. 30-31 (in his area the Khmer Rouge did not use physical coercion in order to move people out); T. 10 April 2013 (François PONCHAUD), p. 15 (did not see the Khmer Rouge mistreat the people); CHEA Leng Interview Record, E3/5231, 18 December 2008, p. 3, ERN (En) 00279250 (while some Khmer Rouge had weapons, others did not; there were no shootings and killings, because the people did not object); Civil Party CHHUM Sokha Interview Record, E3/5788, 2 September 2009, p. 4, ERN (En) 00380712 (he did not witness Khmer Rouge soldiers mistreating people); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 4, ERN (En) 00377359 (did not see mistreatment); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384417 (a former Khmer Rouge soldier stated that in the area in which she operated, the people were obedient, she did not see any violence committed); OM Tit Social Science Research Council Statement, E3/5548, 9 January 1986, pp. 1, 3, ERN (En) 00711595, 00711597 (although armed soldiers made over 700 monks from his wat leave and there were corpses all along the roads, he saw no incidents during the evacuation); TEUNG Leap DC-Cam Interview, E3/5683, 13 February 2003, p. 1, ERN (En) 00184210 (a former Khmer Rouge soldier, stated most people went without a fuss because they were so traumatized by the violence of the last round of fighting that they simply did what they were told, being too scared to do anything else); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 3, ERN (En) 00223335 (a

armed and had a serious demeanour, did not consider the evacuation orders optional and dared not resist.[1407] According to François PONCHAUD, the Khmer Rouge used psychological pressure and threatening looks; it sufficed for soldiers to stare at the people to frighten them into listening to the soldiers' orders.[1408]

10.2.7. *No Exceptions*

476. Everyone was evacuated,[1409] including monks,[1410] the old and the young, the

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former Khmer Rouge soldier, stated no-one was stubborn or refused in the locations he evacuated); PHACH Siek Interview Record, E3/5165, 1 April 2008, p. 6, ERN (En) 00195392 (a former Khmer Rouge soldier, she did not see any people killed as they agreed to leave).

[1407] T. 23 October 2012 (LAY Bony), pp. 88-89 (each of the Khmer Rouge who came to her house carried a gun; they did not dare protest because they saw them carrying guns and their attitude was very firm); T. 24 October 2012 (LAY Bony), pp. 23 (they feared being shot if they did not go), 25-26 (although they were not threatened, when they saw the guns they were already afraid); T. 12 December 2012 (Denise AFFONÇO), pp. 71-72 (although they were armed they did not point their guns at the witness, no one she saw resisted; if they did not leave they would have taken them for traitors, imperialists, and people who were in the pay of the old regime, and they would have massacred them), 102 (evacuation was clearly not optional); T. 9 January 2013 (UNG Ren), pp. 44-45 (agreed no one would agree to leave their homes unless coerced and being pushed by others); T. 22 October 2012 (CHUM Sokha), p. 95 (regarding the party's order to evacuate the city, "when they said something, they meant it"); T. 29 January 2013 (Al ROCKOFF), pp. 11-14 (did not witness much resistance to the evacuation but assumed that the 2 million refugees were not interested in staying in Phnom Penh and wanted to go back to where they came from; in any event, as the Khmer Rouge had the AKs and the power if they asked you to leave, what would you do?); T. 6 November 2012 (MOM Sam Oeurn), p. 48 (no one dared resist for fear of being shot); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (although they did not want to leave, the soldiers looked so vicious and they had guns); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (five Khmer Rouge soldiers prepared their guns when they were in front of the house and forced them to leave, after which she saw the soldiers 'exploring' their house); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (people, in general, left unwillingly); Civil Party CHHUM Sokha Interview Record, E3/5788, 2 September 2009, p. 3, ERN (En) 00380711 (people left because they were afraid of both bombs and the Khmer Rouge possible actions if they did not); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 3, ERN (En) 00377358 (if we did not leave they would have shot us); CHEA Leng Interview Record, E3/5231, 18 December 2008, p. 3, ERN (En) 00279250 (none of the people wanted to leave, because they regretted the loss of their property).

[1408] T. 9 April 2013 (François PONCHAUD), pp. 25-26, 30-31, 70-71; T. 10 April 2013 (François PONCHAUD), p. 22.

[1409] T. 5 November 2012 (SUM Chea), p. 27 (a former Khmer Rouge soldier, stated the whole population of Phnom Penh had to be evacuated, even hospital patients, handicapped people or people with disabilities, children, elderly people); CHIN Mat Civil Party Application, E3/4717, 15 December 2008, p. 6, ERN (En) 00476122 (a former Khmer Rouge soldier, stated male units were sent to evacuate all 17 April people from Phnom Penh, not even a single person was allowed to stay).

[1410] OM Tit Social Science Research Council Statement, E3/5548, 9 January 1986, p. 3, ERN (En) 00711597 (a monk at Watt Moha Mundrei, he and over 700 monks from his watt were evacuated; two monks who were sick and refused to leave, were later taken away); HOUL Sovann Social Science Research Council Statement, E3/5550, 8 January 1986, ERN (En) 00415438 (a monk at Watt Sompeou Meas, stated between 150 and 175 monks were evacuated from his watt); KHUT Un Interview Record, E3/5130, 13 November 2007, pp. 2-3, ERN (En) 00223179-80 (all 400 monks from Watt Koh were evacuated); NORNG Ponna Interview Record, E3/5131, 14 November 2007, p. 3, ERN (En) 00223185 (about 400 monks from his pagoda were evacuated); T. 7 February 2013 (PIN Yathay), pp. 18-19, 22

sick and injured from the city's hospitals,[1411] pregnant women and those who had recently given birth.[1412] Witnesses and civil parties recounted seeing the sick and

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(Khmer Rouge came to Watt Ounalom to evacuate those taking refuge there as well as the monks; at Watt Ounalom were asked to leave. Due to his advanced age Samdech Huot Tat and few others monks did not go, but PIN did not know what happened after he left).

[1411] T. 5 November 2012 (SUM Chea), p. 27 (a former Khmer Rouge soldier, stated the whole population of Phnom Penh had to be evacuated, even hospital patients, handicapped people or people with disabilities, children, elderly people - they all had to be evacuated to different directions); T. 29 May 2013 (HUO Chanthar), p. 72 (there were disabled people, old people, and young people); T. 24 April 2013 (CHUON Thi), p. 71 (among those evacuated were young and old people and children); T. 4 December 2012 (TOENG Sokha), pp. 42-43 (the elderly and the injured had a very difficult time); T. 12 December 2012 (Denise AFFONÇO), p. 74; T. 10 April 2013 (François PONCHAUD), pp. 48-49 (save for foreigners who went to the French Embassy, everyone was evacuated, there was no discrimination), 65 (people of all ages, children, women and patients were all evacuated; they would surely die); T. 25 April 2013 (RUOS Suy), p. 89 (people from all walks of life, the sick, peoples whose parents were very ill, who could not walk); T. 5 November 2012 (SUM Chea), pp. 28 (at Calmette Hospital children or loved ones pushed relatives in push carts, and sick people walked with difficulties), 56, 66 (Calmette was empty within two days); T. 12 December 2012 (Denise AFFONÇO), pp. 72, 100; T. 5 December 2012 (PECH Srey Phal), pp. 19-20; T. 11 January 2013 (CHHAOM Se), p. 64 (they were ordered to evacuate everyone without exception and immediately; in practice this included the pregnant, the sick in hospitals, the elderly, and the handicapped); T. 9 April 2013 (François PONCHAUD), pp. 71-72 (the Khmer Rouge evacuated patients from hospitals; he heard that the Khmer Rouge evacuated Preah Ket Mealea Hospital although there were many wounded soldiers everywhere in the hospital); T. 29 May 2013 (CHAN Socheat), pp. 42-43 (saw some people with drips in their hand); T. 5 June 2013 (Sydney SCHANBERG), p. 11 (no matter how sick they were, they were taken out of the hospitals, the hospitals were empty); T. 6 June 2013 (Sydney SCHANBERG), pp. 8-9 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 76, ERN (En) 00898284, Murray Carmichael, a Red Cross surgical doctor, described the emptying of one of the hospitals: "They threw everyone out - even paralytics, critical cases, people on plasma. Many will die. It was just horrible."), 11 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 82, ERN (En) 00898290, noting that on 19 April a nurse from Calmette hospital said Khmer Rouge soldiers ordered nearly all the patients out over the last two days and those who could not walk were pushed up the streets on beds); MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, pp. 2, 4, ERN (En) 00944521, 00944523 (at Preah Angk Duong hospital with his father, a doctor, at the time, Khmer Rouge forces ordered that all those who could walk had to leave, before they disconnected the intravenous syringes and drips of the wounded); SOU Sotheavy Civil Party Application, E3/4607, 12 August 2008, ERN (En) 00279712 (pregnant women, sick people who could not walk, all the people were evacuated from the capital city, Phnom Penh, and treated like animals regardless of age, physical or mental ability, whether they were man or woman); SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178 (the streets were crowded full of people, young and old, included those who had just delivered babies, the elderly and the sick); Refugee Accounts, E3/4590, pp. 205, ERN (En) 00820523 (on 3 June 1976 PECH Ling Kong stated that they deported the patients who were in the hospitals, those who could walk did; those who had drips, they removed the drips and deported them too), 250, ERN (En) 00820568 (saw patients, some in serious conditions, being chased out of Russian Hospital; even people who had just undergone operations or had had an arm or a leg amputated, hundreds of them, crawled away. The sidewalk in front of the hospital was teeming with patients and most could not walk unassisted. They chased surgeons out of the operating room while they were in the middle of an operation; the patients on the operating table died as a result).

[1412] T. 22 November 2012 (OR Ry), p. 100; T. 23 November 2012 (OR Ry), pp. 4-5, 15 (even her mother who had just given birth, and her sister who was injured had to evacuate immediately); T. 23 October 2012 (LAY Bony), p. 87 (had recently delivered her baby, was carrying two children and was travelling on foot in the heat of the day); T. 24 October 2012 (LAY Bony), pp. 36, 59 (her health was not good as she had also just delivered a baby); T. 29 May 2013 (HUO Chanthar), p. 72 (women who had just delivered their babies were forced to walk in the elements, the sun and the rain); T. 27 May 2013 (SOU Sotheavy), p. 15 (saw pregnant women that had to push carts during the evacuation); T. 10 April 2013 (François PONCHAUD), p. 65 (women who had just given birth would have little chance

injured evacuated while limping on crutches, pushed in their hospital beds, wheelbarrows or wheelchairs, with intravenous drips still attached or trailing oxygen tanks,[1413] while sick people and cripples were "crawling like worms" in front of the house where François PONCHAUD was standing.[1414]

477. At hospitals, seriously injured patients (primarily soldiers previously injured in fighting) and the weak who could not be evacuated were left behind to die as everyone else was evacuated.[1415] Two accounts relate how surgeons were chased out

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to survive); SREY Khem Interview Record, E3/546, 5 December 2007, p. 3, ERN (En) 00233582 (saw mothers who had just given birth); Refugee Accounts, E3/4590, p. 133, ERN (En) 00820451 (a law student stated at Preak ket Mealea they shoved the badly injured and the women who came to deliver off their beds).

[1413] T. 23 October 2012 (LAY Bony), pp. 91-92 (some patients were attached to intravenous drips); T. 24 October 2012 (LAY Bony), pp. 7-8, 21-27 (saw patients who had been evacuated from the Khmer Soviet Friendship Hospital being pushed in their hospital beds, lifted in stretchers or carried by others); T. 6 November 2012 (MOM Sam Oeurn), p. 27 (saw two hospital patients walking with intravenous drips still attached); T. 29 May 2013 (THOUCH Phandarasar), p. 6 (saw sick people in their beds with their drip on the road under the burning sun and people who could not walk); T. 29 May 2013 (HUO Chanthar), p. 72 (some people had intravenous drips in their hands); T. 7 February 2013 (PIN Yathay), p. 20 (saw people being pushed in hospital beds leaving the city along Monivong Boulevard); T. 4 June 2013 (BAY Sophany), p. 9 (saw disabled people and people who were using oxygen tanks); T. 28 January 2013 (Al ROCKOFF), pp. 64, 87 (saw a patient being pushed on a gurney and people on crutches); T. 5 June 2013 (Sydney SCHANBERG), p. 7 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 71, ERN (En) 00898279 (there were thousands of wounded people from the hospitals, some limping, some on crutches, including amputees, and some being pushed by relatives in barrows and wheelchairs and on their very hospital beds with plasma bottles still attached to their arms); T. 6 June 2013 (Sydney SCHANBERG), p. 11 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 82, ERN (En) 00898290, noting that on 19 April a nurse from Calmette hospital said those evacuated from Calmette who could not walk were pushed up the streets on beds).
See also, French Ministry of Foreign Affairs Incoming Telegram, Subject: Situation in Phnom Penh on 18 April at 08:00, E3/2691, 18 April 1975 (reporting 'Exodus. A million people are fleeing. Patients leaving Calmette in their beds'); François BIZOT Interview Record, E3/5137, 22 January 2008, ERN (En) 00233537 (saw people with bandaged heads walking); SAU Sary Supplementary Information, E3/4951, 15 June 2010, p. 1, ERN (En) 00874077 (her husband, a former LON NOL soldier, was ill and unable to walk, so she pulled him in a cart even though she was 8-months pregnant at that time).

[1414] T. 9 April 2013 (François PONCHAUD), p. 24. *See also*, Refugee Accounts, E3/4590, p. 250, ERN (En) 00820568 (saw patients, some in serious conditions, being chased out of Russian Hospital; even people who had just undergone operations or had had an arm or a leg amputated, hundreds of them, crawled away. The sidewalk in front of the hospital was teeming with patients and most could not walk unassisted).

[1415] T. 5 November 2012 (SUM Chea), pp. 14 (saw patients who were not properly treated in hospitals), 50 (*citing* SUM Chea Interview Record, E3/3961, ERN (En) 00223346, at Calmette Hospital those without relatives laid there to die at the hospital), 81 (there were only helpless patients inside); T. 22 October 2012 (CHUM Sokha), pp. 78-79 (at Borei Keila Hospital the patients were left unattended to die), 100 (nobody took care of patients; they would stay there and die or bleed to death; he had to abandon his uncle and his wife who were wounded; he was told that they were gathered up and taken away and left somewhere, but he did not know what happened or where they were thrown); T. 22 November 2012 (MEAS Saran), p. 28 (as part of the medical staff, he felt uncomfortable leaving the patients behind, he thought they would die); T. 28 January 2013 (Al ROCKOFF), pp. 38, 86 (at Preah Ket Mealea Hospital which was being emptied, he found bodies on the floor and many wounded people); T. 6 June 2013 (Sydney SCHANBERG), p. 11 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 82, ERN (En) 00898290, noting that on 19 April a nurse from Calmette hospital said

of the Red Cross surgery at Hotel Le Phnom and the Russian Hospital respectively while in the middle of operations, leaving their patients on the operating table to die.[1416] Sydney SCHANBERG noted that a nurse from Calmette hospital said that staff hoped that Khmer Rouge doctors would come and care for those gravely wounded and newly operated persons who could not be moved, but they never saw any Khmer Rouge medical teams, only soldiers.[1417] MEAS Saran, a nurse at Borei Keila Hospital at the time, also described how despite the presence of numerous untreated wounded who had arrived at the hospital, the Khmer Rouge did not take charge of the hospital or assist the staff to evacuate the hospital.[1418] According to NUON Chea, the leadership did not have time to determine how many hospitals or patients would be affected by the decision to evacuate.[1419]

478. Hotel Le Phnom, an ICRC-declared neutral zone which as of one week before 17 April was used to shelter wounded soldiers and refugees,[1420] was also forcibly evacuated; Khmer Rouge soldiers expelled Cambodians taking refuge there, as well as

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that in evacuating the hospital staff left behind some gravely wounded and newly operated persons who could not be moved; among those left behind, were five badly malnourished infants); MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, pp. 2, 4, ERN (En) 00944521, 00944523 (at Preah Angk Duong hospital with his father, a doctor, at the time, Khmer Rouge forces brutally killed some people on their hospital beds); *Analysis Prepared on Behalf of the Sub-Commission by Its Chairman of Materials Submitted to It and the Commission on Human Rights under decision 9 (XXXIV)* (ECOSOC), E3/2060, 30 January 1979, p. 11, ERN (En) 00078653 (witness statement extract states that after the hospitals were evacuated those newly operated upon received no care and died; a department for sick children turned into a common grave as no one was allowed in to fetch them); ICRC Annual Reports, E3/4090, December 1975, p. 3, ERN (En) 00166142 (the ICRC sent a British surgical team to the Preah Ket Mealea Hospital, which had been abandoned by its surgical personnel, but they were unable to pass the road blocks).

[1416] T. 6 June 2013 (Sydney SCHANBERG), pp. 8-9 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 76, ERN (En) 00898284, was told by Murray Carmichael, a Red Cross surgical doctor, that the Khmer Rouge soldiers had forced Carmichael to abandon a patient in mid-operation at the Red Cross surgery in the Hotel Le Phnom); Refugee Accounts, E3/4590, p. 250, ERN (En) 00820568.

[1417] T. 6 June 2013 (Sydney SCHANBERG), p. 11 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 82, ERN (En) 00898290).

[1418] T. 22 November 2012 (MEAS Saran), pp. 19-25.

[1419] T. 30 January 2012 (NUON Chea), pp. 19-20.

[1420] T. 9 April 2013 (François PONCHAUD), p. 19 (at Le Phnom Hotel the head of the Red Cross created a kind of international refugee camp for civilians and soldiers who had been disarmed); T. 28 January 2013 (Al ROCKOFF), p. 17 (about a week before the end of the war, about the time of the American evacuation on 12 April, the ICRC declared it a safe zone and hung a large Red Cross banner in front of the hotel; they had set up a surgical theatre in the back of the hotel and were admitting people that needed immediate medical attention; thousands of people milled around trying to gain access to the hotel).

Red Cross personnel and foreigners.[1421] The latter, including Alan ROCKOFF and Sydney SCHANBERG, were directed to the French Embassy where many foreigners and Cambodians also sought refuge.[1422]

479. Seeking to enter and search Embassy premises on several occasions,[1423] the Khmer Rouge soon considered that the Embassy had become a mere 'regroupment centre' for foreigners and declared the Embassy had lost its inviolable status.[1424]

[1421] T. 28 January 2013 (Al ROCKOFF), p. 17 (the hotel was declared a safe zone by the ICRC, but on 17 April everyone was kicked out of there regardless), 65-66 (the Red Cross had to evacuate along with everybody else); T. 6 June 2013 (Sydney SCHANBERG), pp. 14-15 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 67, ERN (En) 00898275, describing how towards 3 p.m. Khmer Rouge troops brandishing rockets and other weapons forced their way into the neutral zone at Hotel Le Phnom; their main mission seemed to be a search for government military officers; foreigners leaving the hotel said they had been told they had half an hour to get out and go to the French Embassy); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 4, ERN (En) 00003279 (at 4:55 pm, Khmer Rouge soldiers forced their way into Hotel Le Phnom menacing inmates with B40 rockets; summoning the chief Red Cross delegate, they told him harshly to empty the place within half-an-hour).

[1422] T. 28 January 2013 (Al ROCKOFF), pp. 46 (foreigners had already sought refuge in the Embassy before 17 April), 48, 57, 59-60 (he and Schanberg thereafter went to the French Embassy as they had been instructed), 101 (East-Germans were also forced out of their embassy at gunpoint by the Khmer Rouge and sent to the French Embassy), 111 (the Embassy was not preventing people from coming over the walls); T. 7 February 2013 (PIN Yathay), p. 96 (Russian embassy staff were also taken to the French Embassy); T. 9 April 2013 (François PONCHAUD), pp. 35-36 (there were around 500 foreigners and 500 Cambodians taking refuge at the embassy), 42 (even East Germans who were communist were taken to the embassy); T. 6 June 2013 (Sydney SCHANBERG), pp. 14-15 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 67, ERN (En) 00898275, foreigners leaving Hotel Le Phnom said they had been told they had half an hour to get out and go to the French Embassy); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 4, ERN (En) 00003279 (after being kicked out of Hotel Le Phnom the general consensus was to go to the French Embassy down the road; on the morning of 18 April about 1,500 people were sheltering at the embassy and more refugees were jumping its walls to get in); French Ministry of Foreign Affairs Telegram, Subject: Situation in Phnom Penh - 21h00, E3/2688, 17 April 1975 (reporting that 1,000 people sought refuge in the embassy compound by climbing over the fence).

[1423] French Ministry of Foreign Affairs Telegram, E3/2689, 17 April 1975, ERN (En) 00486884 (notes FUNK troops have tried on three occasions to enter the embassy to conduct searches); French Ministry of Foreign Affairs Received Telegram, Subject: Situation in Phnom Penh – 10:30, E3/2692. 18 April 1975, ERN (En) 00486886 (reporting the FUNK group again appeared at the entrance to the Embassy and asked to enter the courtyard to search the vehicles; only just avoided an incident); French Ministry of Foreign Affairs Telegram, Subject: Situation at our Embassy, E3/2698, 19 April 1975, ERN (En) 00738336 (noting since last evening the embassy has been surrounded by FUNK soldiers; at this time no-one can enter or leave the embassy premises without their authorisation); T. 6 June 2013 (Sydney SCHANBERG), p. 18 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 87-88, ERN (En) 00898295-96, recounting how three armed Khmer Rouge officers in black and with notebooks guarded by two riflemen came into the embassy; Consul Dyrac acted as their guide as they walked around with blank unsmiling faces looking at people closely, asking questions, making notes and discussing things among themselves). ROCKOFF also recounted how Khmer Rouge subsequently came through the embassy searching for radios transmitters, claiming there were illegal radio broadcasts coming out of the embassy: T. 28 January 2013 (Al ROCKOFF), p. 89; T. 29 January 2013 (Al ROCKOFF), pp. 54-55.

[1424] T. 5 June 2013 (Sydney SCHANBERG), p. 60 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 83-84, ERN (En) 00898291-92, noting that in their latest meetings with Consul Dyran, the Khmer Rouge told Consul Dyrac that they no longer considered this an embassy enjoying

Consequently, hundreds of Cambodians taking refuge there were obliged to leave the Embassy premises, among them Cambodian men married to foreigners and who were thus separated from their foreign wives and Cambodian women who had not gained foreign citizenship although married to foreigners.[1425] As Cambodian women with foreign passports were permitted to remain in the Embassy with their foreign

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diplomatic privileged but merely a regroupment zone for foreigners, which ruled out the possibility of asylum and made it essential that the Cambodians depart); Jon SWAIN Article (London Times), E3/51, 11 May 1975, pp. 6-7, ERN (En) 00003280-81 (reporting that on 20 April the Embassy lost its official status).

[1425] T. 5 June 2013 (Sydney SCHANBERG), p. 60 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 83-84, ERN (En) 00898291-92, noting that at about 7.30 a.m., embassy staff start telling Cambodians without French papers that they must leave and join the trek into the countryside because if they stayed, there could be trouble); T. 28 January 2013 (Al ROCKOFF), p. 67 (many Khmer were forced out of the embassy after the first or second day), 70-72 (a group of minorities from the other side of the Mekong, about 300 people, were forced out of the embassy at gunpoint), 73-74 (many Khmer were leaving on 20 April), 99-101, 102 (many Khmer left voluntarily as the Khmer Rouge had threatened to come through and search the premises); T. 9 April 2013 (François PONCHAUD), pp. 36-37 (Cambodian men married to French women had to leave in order to work with the Cambodian people, in general; so, on 20 April, around 25 Cambodian men married to French ladies were separated from their loved ones), 44 (after the departures, there were about 500 people left); Jon SWAIN Article (London Times), E3/51, 11 May 1975, pp. 6-7, ERN (En) 00003280-81 (reporting that on 20 April hundreds of Cambodians, Vietnamese and Chinese were asked to leave; Cambodian women who had married French men had not gained French citizenship or were only married under Cambodian law were forced to go, thus splitting up families; on 21 April 150 Montagnards were also made to leave the Embassy); *Phnom Penh: a capture and siege unlike any other* (Notes by J.J. Cazaux), E3/2684, 17 April 1975, pp. 4, ERN (En) 00710314 (on 18 April the consul agreed with Khmer Rouge that Khmer nationals at the embassy were to leave its premises; on 19 April many Khmer had decided to leave), 9, ERN (En) 00710319 (20 April, at 8 a.m. Dyrac tells the Cambodians present it is the best time for them to leave so as to avoid checks at the gates; at 9 a.m. Sirik Matak and the President of the National Assembly identify themselves to the KPNLAF authorities in front of the embassy and leave in a Jeep. the first Cambodian refugees in the embassy decide to leave; 21 April, 7 a.m. Large batches of Cambodian refugees set off, dejected. Some have nervous breakdowns and some beg the Calmette head doctor to euthanize them and their children); French Ministry of Foreign Affairs Telegram, Subject: Departure of Refugees, E3/2702, 20 April 1975, ERN (En) 00504003 (reporting that in addition to the departure of Prince Sirik Matak and other people named in an earlier telegram, a hundred or so other Cambodian nationals intend to give themselves up as prisoners tomorrow morning); French Ministry of Foreign Affairs Telegram, E3/2707, 21 April 1975, ERN (En) 00490595 (notes more than 1,000 Cambodians appear to be in the grounds. Already, the first volunteers, knowing that there is no other solution but to leave, have gathered in the courtyard, prepared to accept their new life, which will begin with a long march. The pain is unbearable for all… some are parting ways after 15 or 20 years of living together); French Ministry of Foreign Affairs Telegram, Subject: Foreign Refugees at the Embassy of France, E3/2715, 23 April 1975, ERN (En) 00743317 (noting the Khmer Rouge are separating foreign wives from their Khmer husbands and are not allowing Cambodians into the French Embassy. The Khmer Rouge has also taken away the embassy's domestic staff, e.g., sentries and drivers); François BIZOT Interview Record, E3/5137, 22 January 2008, ERN (En) 00233537-38 (describing how a number of Cambodians left the Embassy, doubting that they could be protected; those who did not leave voluntarily finally were forced to leave because the Khmer Rouge's message was very clear: "either they leave or we remove them". In fact there was no solution. […] The Khmer Rouge did not understand the notion of right of asylum or the extra-territoriality of the Embassy […] It was the Cambodians who helped us out of this problem by accepting that they must leave voluntarily.").

husbands,[1426] some arranged marriages quickly took place in an attempt to save some Cambodian women; babies were also left with or adopted by foreigners who had a hope of leaving Cambodia.[1427]

480. In accordance with a FUNK statement made in February 1975,[1428] foreigners were definitively evacuated to the Thai border several weeks later.[1429]

[1426] T. 9 April 2013 (François PONCHAUD), p. 36 (Cambodian ladies married to French nationals could stay in the French Embassy); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 7, ERN (En) 00003281 (reporting that Cambodian women who had married French men and had French passports were permitted to stay, while those who had not gained French citizenship or were only married under Cambodian law were forced to go, thus splitting up families).

[1427] T. 9 April 2013 (François PONCHAUD), p. 72 (some families also adopted some Cambodian orphans); T. 6 June 2013 (Sydney SCHANBERG), pp. 16-18 (Dyrac, the embassy's lead official, was using his powers to conduct marriages to help out people who otherwise would not be allowed to go out; the Khmer Rouge found out and told him he had to stop; a Cambodian couple handed their baby to a French woman who promised she would find the baby a family); French Ministry of Foreign Affairs Telegram, E3/2707, 21 April 1975, ERN (En) 00490595 (sent by the Embassy cryptographer, he noted a little boy was born at the embassy the day before; as his mother had to leave the following day, she adopted him as her son); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 7, ERN (En) 00003281 (reporting that a Cambodian couple gave away their seven-month old baby who would not survive a trip to the country-side and Jean-Jacques Cazaux married his Cambodian girlfriend to give her French nationality; the consul backdates the marriage to 12 April to trick the Khmer Rouge).

[1428] GRUNK Telegram Addressed to the UN Secretary-General, E3/189, 21 March 1975 (attaching a statement issued by the Second National Congress of Kampuchea on 24 and 25 February under the presidency of KHIEU Samphan, forwarded by China and to be distributed to all States Members of the UN. The statement details eight points defining GRUNK policies, point 6 of which provides: "The National Congress, on behalf of the nation and people of Kampuchea, FUNK, GRUNK and FAPLNK, reiterates its appeal to all foreign embassies and agencies accredited to the traitors' regime to withdraw their personnel and families without delay from Phnom-Penh and the regions under temporary enemy control in order to avoid suffering possible accidents. FUNK and GRUNK refuse to assume any responsibility for such accidents."). *See also*, DK Propaganda and Information Ministry Press Release on the Departure of the Foreigners from Kampuchea, E3/4129, 10 May 1975, ERN (En) 00762126 (explaining that when the CPNLAF was launching its offensive around Phnom Penh, they repeatedly appealed daily to all foreign embassies, journalists and nationals either accredited to the regime or living within its framework to withdraw from Cambodia in time; while some left, others remained); T. 12 December 2012 (Denise AFFONÇO), pp. 65-66 (in earlier years when the fighting worsened, the French authorities began instructing their citizens to leave Cambodia, however she decided not to follow the instruction and stay with her Chinese husband in Cambodia); Book by François Ponchaud: *Cambodia Year Zero*, E243.1, ERN (En) 00862044 ("We [the foreigners at the French Embassy] were troublemakers who had not obeyed the Angkar's order to all foreigners to leave Cambodia in March 1975.").

[1429] T. 28 January 2013 (Al ROCKOFF), pp. 89-90 (in May 1975, although there was no specific reason given as to why all foreigners had to be expelled, the remaining foreigners were driven overland to Thailand as the Khmer Rouge said they wanted them to see what the Khmer Rouge had done), 116-117 (he was in the first truck of the second convoy that left the French Embassy); T. 29 January 2013 (Al ROCKOFF), pp. 25-26 (the last foreigners were out of Cambodia by 9 May); T. 9 April 2013 (François PONCHAUD), p. 45 (the first convoy of foreigners left the French Embassy on 30 April 1975, the second convoy on 7 May). *See also*, *Phnom Penh: a capture and siege unlike any other* (Notes by J.J. Cazaux), E3/2684, 17 April 1975, ERN (En) 00710316-17 (on 28 April 1975 the new authorities in Phnom Penh decided that all diplomatic and international representatives must leave Phnom Penh on 30 April and that the Cambodian government would take care of taking the foreign nationals to the Thai border; on 30 April they board the vehicles to depart); DK Propaganda and

10.2.8. *March Out of Phnom Penh*

481. Armed Khmer Rouge soldiers lined the main roads and supervised the evacuation as they directed the population to keep moving out of the city and onwards.[1430] Some evacuees were prevented from finding their family members in other parts of the city. Denise AFFONÇO and François PONCHAUD described how

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Information Ministry Press Release on the Departure of the Foreigners from Kampuchea, E3/4129, 10 May 1975, ERN (En) 00762127 (explaining that after the liberation of Phnom Penh the Government of Kampuchea again asked the remaining foreigners to leave Cambodia, and did their best to transport them to a place where their government or friends could meet them, and provide them safe exit from Cambodia).

[1430] T. 5 November 2012 (SUM Chea), p. 24 (was stationed on the road leading to the French Embassy and stated people had been evacuated easily under their supervision); T. 5 December 2012 (KIM Vanndy), p. 96 (there were soldiers on both sides of the road who pointed to the direction they wanted the people to go); T. 29 May 2013 (THOUCH Phandarasar), p. 6 (Khmer Rouge soldiers forced her family to keep moving after Kilometre 13); T. 30 May 2013 (NOU Hoan), pp. 24-25 (they were not escorted by the Khmer Rouge soldiers but he saw soldiers along the road they travelled); T. 22 November 2012 (MEAS Saran), p. 37 (the Khmer Rouge were on the road, either travelling or walking, but did not instruct them what to do); T. 6 November 2012 (MOM Sam Oeurn), pp. 10, 27-28, 47 (Khmer Rouge soldiers threatened them to move faster, not look back and pointed their guns at them); T. 5 December 2012 (PECH Srey Phal), p. 19 (people could not walk freely as armed soldiers escorted the crowd all along); T. 10 April 2013 (François PONCHAUD), p. 16 (could not recall whether there were Khmer Rouge soldiers guarding the people as they were leaving the city, but there were Khmer Rouge soldiers along the way); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 12, ERN (En) 00087548 (KONG Samrach noticed when leaving home that 2 or 3 soldiers in black uniforms were posted at each cross-roads); Civil Party SOU Sotheavy Interview Record, E3/4608, 13 October 2009, p. 3, ERN (En) 00426416 (during the evacuation we had to be supervised by the Khmer Rouge and to follow their order); CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 2, ERN (En) 00274679 (Khmer Rouge troops were everywhere, on the roads and where I stayed); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 4, ERN (En) 00399169 (Khmer Rouge were standing along the road, and kept on pointing and telling people to keep travelling forward); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384417 (a former Khmer Rouge soldier stated the Khmer Rouge soldiers escorted the evacuees in all the streets of Phnom Penh); Refugee Accounts, E3/4590, 19 May 1976, p. 183, ERN (En) 00820501 (NI Bunly stated that some Khmer Rouge were driving people from behind while uttering threats); KEO Roy Civil Party Application, E3/4838, undated, p. 3, ERN (En) 00893366 (travelled on foot under the close watch of Khmer Rouge troops with guns in their hands, all along the way); PAL Rattanak Civil Party Application, E3/4839, undated, pp. 2, ERN (En) 00893370 (thousands of soldiers pointed their guns at people telling them to leave the city), 3, ERN (En) 00893371 (soldiers pointed their rifles at people and shouted at them, forcing them to walk as quickly as possible); NGOUN Tin Civil Party Application, E3/5004, 19 July 2009, p. 3, ERN (En) 00871742 (there were armed Khmer Rouge soldiers along the way); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (they were forced to walk in one direction and soldiers blocked every cross road obliging them to go straight with all the other citizens); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 4, ERN (En) 00377359 (the armed Khmer Rouge soldiers were deployed in the streets watching the evacuees going); *cf.* T. 22 October 2012 (CHUM Sokha), p. 45 (there were no people guarding along the road). *See also,* T. 20 September 2012 (CHEA Say), pp. 49-50 (a former Khmer Rouge soldier who had received orders to participate in the evacuation was tasked with escorting civilians on a boat to Preaek Pou in Kampong Cham; the civilians were accompanied by soldiers during and after the boat trip for their own protection); EM Phoeung Interview Record, E3/5133, 19 November 2007, p. 3, ERN (En) 00223199 (the Khmer Rouge soldiers escorted them and pointed the way to prevent them from going off in a different direction); *See also,* Judgement Annex III – Map of Movement of the Population (Phase I), E313.3.

people were evacuated according to the sector they lived in, and that those who lived in the south could not travel towards the north of the city as there were roadblocks everywhere. Denise AFFONÇO was herself unable to join her mother who was in the western part of the city.[1431]

482. The exodus of thousands of people from Phnom Penh was described as crowded, chaotic, confusing and difficult, as evacuees struggled with little children and elderly family members.[1432] Denise AFFONÇO spoke of indescribable chaos, people carrying their possessions and walking under the sun with crying children.[1433] Jon Swain aptly described the exodus as a great caravan of human misery.[1434]

[1431] T. 13 December 2012 (Denise AFFONÇO), pp. 83-84; T. 9 April 2013 (François PONCHAUD), pp. 29-30 (people had to leave the city through different directions, according to their areas of residence in Phnom Penh. Those who stayed in the northern part of the city, they had to leave from the northern part). *See also,* T. 12 December 2012 (Denise AFFONÇO), pp. 69-70, 72, 111 (she and her Chinese husband were not allowed to go to the French Embassy as the roads were cut off, they were sent southwards); HUM Ponak Civil Party Application, E3/4759, 10 January 2010, p. 1, ERN (En) 00887719 (was separated from her family as Khmer Rouge soldiers would not let her go to meet them at the French Embassy).

[1432] T. 23 October 2012 (LAY Bony), p. 87 (there were jams and people all over the street, and they had to move very slowly; the distance between Koh Pich to the Royal University of Law took the whole morning; having recently delivered her baby, she was also carrying two children aged five and three and had to travel on foot); T. 5 December 2012 (KIM Vanndy), pp. 87-88 (National Road No. 6 was congested with people); T. 22 November 2012 (OR Ry), p. 99 (many people leaving together, it was crowded); T. 24 October 2012 (KUNG Kim), p. 88 (when the plan to evacuate people was executed, the streets were crowded with many people marching out of the city and it was chaotic); T. 30 May 2013 (NOU Hoan), p. 25 (the situation was confusing along the national road as it was fully crowded); T. 15 August 2012 (SA Siek), pp. 72, 105 (referred to tens of thousands being evacuated); T. 28 January 2013 (Al ROCKOFF), p. 39 (saw people streaming past while he was temporarily detained under the Japanese Bridge by Khmer Rouge soldiers and the pace of people leaving was picking up); T. 28 May 2012 (NY Kan), p. 79 (observed the roads were flooded with people); T. 19 April 2012 (SAUT Toeung), p. 80 (saw a lot of people marching out of the city, Phnom Penh was in chaos and people were leaving); T. 9 January 2013 (UNG Ren), p. 44; T. 10 April 2013 (François PONCHAUD), p. 65 (saw 200 to 300 people evacuated along Monivong Boulevard); T. 29 May 2013 (CHAN Socheat), pp. 42-43 (had several younger siblings and the evacuation was very difficult; was shocked to see masses of people on Monivong Boulevard); T. 29 May 2013 (HUO Chanthar), p. 71 (the situation caused them confusion and they were scared; she saw people crowded along the road); T. 5 June 2013 (Sydney SCHANBERG), p. 15 (saw thousands and thousands of people going up route 5 towards Siem Reap); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 4, ERN (En) 00223336 (a former Khmer Rouge soldier, while chasing people out of the city saw some pushing carts with sick people and the elderly and described it as pitiful); TOP Ny Victim Complaint, E3/5452, 25 October 2009, p. 7, ERN (En) 00835299 (hundreds of thousands of people travelled miserably along National Road No.5, starting from Phnom Penh to Oudong District days and nights); CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 2, ERN (En) 00274679 (some people tied themselves to the wrists of their children to keep them from straying); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, p. 3, ERN (En) 00156847 (there were "millions" of people on the road so they could travel by car only 40 to 50 meters per day); Aerial Photograph, E3/3000, 18 April 1975.

[1433] T. 12 December 2012 (Denise AFFONÇO), p. 73.

[1434] Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 4, ERN (En) 00003279.

483. The streets were so crowded it was difficult to move.[1435] According to MOM Sam Ouern, it took her and her family six hours to get from their house south of the Independence Monument to Monivong Bridge[1436] due to the dense crowds.[1437] In the chaos and crowds of the evacuation, many people, including children, were separated from their families along the way.[1438] Denise AFFONÇO lost sight of her brother-in-law, who was following the family's car, and has never seen him again.[1439]

484. The city's population set out by whatever means were available to them, mostly on foot, but also by bikes, push carts, or with cars.[1440] People who left by car

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[1435] T. 4 December 2012 (TOENG Sokha), pp. 41-43 (they followed crowds of people walking south, it was so crowded it was difficult to move, the sick and the elderly had a lot of difficulties moving), 54; T. 7 February 2013 (PIN Yathay), pp. 20, 87 (travel south along Monivong Boulevard was very slow because the street was congested by the big crowd of people); T. 4 June 2013 (BAY Sophany), p. 8 (the road was fully crowded; each step took a long time to move forward); T. 30 May 2013 (PO Dina), p. 96 (they went by motorbike to Monivong Bridge where they found a lot of people marching out of the city, they could only move approximately 5 metres or so, and they got stuck with the people, but they had to keep walking, they just went on and on); T. 5 December 2012 (PECH Srey Phal), p. 19 (there were a lot of people marching, moving together in one direction, they could not move quickly).

[1436] The Chamber estimates this is a distance of about three kilometers.

[1437] T. 6 November 2012 (MOM Sam Oeurn), pp. 6, 46.

[1438] T. 30 May 2013 (NOU Hoan), p. 25 (the situation along the national road was confusing as it was fully crowded and some people were looking for their family members); T. 19 October 2012 (YIM Sovann), p. 91 (her uncle and aunt were also evacuated to an area near hers but they got lost and were separated such that they did not know where they were); KUNG Narin Civil Party Application, E3/4773, undated, p. 2, ERN (En) 00890598 (during the evacuation which was chaotic, some people lost their children, some separated from their parents); KEO Roy Civil Party Application, E3/4838, undated, p. 3, ERN (En) 00893366 (children cried because they had got lost and were unable to find their mothers); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 3, ERN (En) 00399168 (near Chamkar Mon, there was a check point where families became separated as males were sent to the glass factory and women continued to journey forward); Report by H. LOCARD: *Bophea Region*, E3/3209, undated, p. 54, ERN (En) 00403184 (Vong Sopheap got separated from his family of 4 at the time of the evacuation of Phnom Penh); CHEA Phan Interview Record, E3/5143, 12 December 2007, p. 3, ERN (En) 00223619 (people leaving Phnom Penh were crying after being separated from their parents and children); KHOEM Nareth Interview Record, E3/1747, 16 July 2008, p. 3, ERN (En) 00243009 (as there were a lot of people, his mother was separated from him and his sister's family); NORNG Saran Civil Party Application, E3/4653, 25 February 2009, p. 3, ERN (En) 00864058 (saw young children crying as they had lost their parents); NEANG Muong Sokhon Civil Party Application, E3/4681, 30 May 2008, p. 6, ERN (En) 00850906 (lost their fourth child on 17 April 1975 in the crowd); NHEAN Rin Supplementary Information, E3/4832, 19 April 2010, p. 2, ERN (En) 00853101 (after the Khmer Rouge liberated Phnom Penh in 1975, he and his mother were separated from his father and older sisters); SOURN Sopha Civil Party Application, E3/4837, undated, p. 2, ERN (En) 00891225 (some people lost their children, and others their parents and siblings).

[1439] T. 12 December 2012 (Denise AFFONÇO), pp. 102-103.

[1440] Mostly they left on foot: T. 5 December 2012 (KIM Vanndy), p. 103 (there was no transportation; his family was on foot all the time); T. 4 December 2012 (TOENG Sokha), pp. 39-41 (describing people walking), 58 (her family were walking with motorbikes); T. 9 January 2013 (UNG Ren), p. 44 (they walked and could carry their luggage on pushcarts and bicycles); T. 9 April 2013 (François PONCHAUD), p. 25 (saw people walking, marching out of the city); T. 28 January 2013 (Al ROCKOFF), p. 88 (mostly on foot). Also using bikes, pushing carts or cars: T. 19 October 2012 (YIM Sovann), p. 83 (people pushed cars without gas to carry their goods and had to carry stuff on their shoulders and heads); T. 25 October 2012 (KUNG Kim), p. 51; T. 12 December 2012 (Denise

soon ran out of fuel, or had their cars confiscated by Khmer Rouge soldiers shortly thereafter.[1441] Civil Party CHUM Sokha described how he and his family were forced to proceed on foot after Angkar appropriated the jeep they were using, claiming it belonged to the imperialists and was a spoil of war.[1442]

10.2.9. ***Destination***

485. At the time of evacuation many people did not know where to go other than to exit the city.[1443] Some were directed to return to their native villages or a rural area.[1444] NY Kan, SON Sen's brother and member of the CPK propaganda committee,

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AFFONÇO), pp. 70, 72-73 (by car, foot and bicycles, the sick on stretchers); T. 6 November 2012 (MOM Sam Oeurn), p. 39; T. 28 January 2013 (Al ROCKOFF), pp. 64-65, 88, 111 (a hospital patient was pushed on a gurney; there were not many bicycles; some people including Red Cross people pushed their cars instead of driving because the Khmer Rouge would stop people from driving although pushing a vehicle was okay); T. 8 October 2012 (MEAS Voeun), p. 12 (he noticed civilians leaving Phnom Penh, some carrying luggage or pushing carts, some pushing vehicles without gas); T. 29 May 2013 (THOUCH Phandarasar), p. 5 (left with two cars and had to push them at one point); T. 29 May 2013 (HUO Chanthar), p. 71 (some were driving vehicles very slowly, some were driving their motorbikes, some were walking their bikes); T. 7 February 2013 (PIN Yathay), pp. 20, 87 (he and around 30 members of his family travelled in three cars, two motorbikes and one bicycle); T. 30 May 2013 (PO Dina), p. 96 (by motorbike); T. 4 December 2012 (TOENG Sokha), p. 58; T. 5 December 2012 (PECH Srey Phal), pp. 18 (took their car which ran out of gas so they pushed it), 19 (others were riding bicycles or taking cyclos or on foot); T. 25 April 2013 (RUOS Suy), p. 89 (people who took their cars, ran out of gasoline, and then had to push the cars).

[1441] T. 22 October 2012 (CHUM Sokha), p. 39; T. 28 January 2013 (Al ROCKOFF), pp. 65, 88 (north of Phnom Penh, you would lose the vehicle and all of the possessions anyway); T. 8 October 2012 (MEAS Voeun), p. 12 (ran out of fuel); T. 22 October 2012 (CHUM Sokha), p. 38; T. 29 May 2013 (THOUCH Phandarasar), p. 5 (they confiscated two cars); T. 6 November 2012 (MOM Sam Oeurn), pp. 14, 24-25 (her Volkswagen was confiscated by a Khmer Rouge soldier).

[1442] T. 22 October 2012 (CHUM Sokha), p. 39.

[1443] T. 22 October 2012 (CHUM Sokha), pp. 37 (it was difficult as there was no clear direction in which to go, they only announced for us to leave the city), 99-100; T. 24 October 2012 (LAY Bony), pp. 23-24; T. 4 December 2012 (TOENG Sokha), pp. 41 (she didn't know where to go), 42 (the following day they were instructed to go east); T. 5 December 2012 (KIM Vanndy), p. 96 (soldiers lined the roads and just pointed the population out of the city); T. 12 December 2012 (Denise AFFONÇO), pp. 104, 111 (she did not know where they were going); T. 22 November 2012 (MEAS Saran), p. 37 (the Khmer Rouge did not instruct them what to do); T. 5 June 2013 (Sydney SCHANBERG), p. 7 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 71, ERN is 00898279, noting people were ordered to head for the countryside and were told they would be given more instructions outside the city); LY Ream Civil Party Application, E3/4980, undated, p. 2, ERN (En) 00893407 (they travelled by foot without a clear destination, not knowing where we were going); NGOUN Tin Civil Party Application, E3/5004, 19 July 2009, p. 3, ERN (En) 00871742 (they were ordered to continue walking, but did not have any idea where they were heading); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 4, ERN (En) 00377359 (the Khmer Rouge did not tell them where to go, just to leave Phnom Penh for a while). *See also*, T. 20 July 2012 (Expert David CHANDLER), pp. 100-101 (people were thrown out without knowing where they were going).

[1444] T. 5 December 2012 (KIM Vanndy), pp. 91 (they were asked to move to a rural area), 99 (his mother was told to return to her native village), 102-103 (there was announcement that they should return to their native villages); T. 19 October 2012 (YIM Sovann), pp. 80-81 (soldiers told YIM Sovann and her family to go to their home village for just three days); T. 15 August 2012 (SA Siek),

stated however that he was instructed to allow people to move to places of their choice, no one was forced to go somewhere they did not belong.[1445] Evacuees from Phnom Penh settled in rural areas in DK zones throughout the rest of the country, including Battambang, Kampong Cham, Kampong Chhnang, Kampong Speu, Kampong Thom, Kampot, Kandal, Prey Veng, Pursat, Svay Rieng and Takeo.[1446]

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pp. 74 (they only wanted people to move out of the city, that is, to return to their native villages), 105 (did not really understand the situation: "I also did not understand, because they were instructed to go temporarily to their native villages, or what?"); T. 4 June 2013 (BAY Sophany), pp. 8-9 (was directed by the Khmer Rouge to go to Kbal Thnal and Chbar Ampov); T. 22 October 2012 (CHUM Sokha), p. 40 (at Angk Kduoch Pagoda, Angkar told us that there was no need for us to proceed to anywhere but to our native village); T. 5 December 2012 (PECH Srey Phal), p. 22 (she heard through the loudspeaker some kilometers after Stung Meanchey that people could head to their hometown if they wished); CHEA Leng Interview Record, E3/5231, 18 December 2008, p. 3, ERN (En) 00279250 (the Khmer Rouge told people to leave Phnom Penh and go to their birthplaces); YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (in Phnom Penh they announced that everyone had to go back to their respective homelands, where they had originated from); SENG Chon Interview Record, E3/5562, 16 October 2009, p. 4, ERN (En) 00400455 (although at first, they were not told where to go, when he arrived at the east river bank, they announced that people should go to their home villages); Refugee Accounts, E3/4590, 29 July 1976, p. 250, EN (En) 00820568 (Lieut. NON Thol stated that at the time of the evacuation they went around in cars announcing that everyone must return to their native villages, except for the natives of Phnom Penh who would remain under Angkar's orders).

[1445] T. 28 May 2012 (NY Kan), p. 76. *See also*, T. 30 May 2013 (NOU Hoan), p. 24 (a soldier told him that he had to keep walking, so based on that, he headed toward the direction of his native village in Prey Veng),

[1446] **Battambang**: CHHOEUN Sem Interview Record, E3/5286, 21 April 2009, p. 3, ERN (En) 00338374 (saw people from Phnom Penh arrive to live in Phnom Srok, Battambang); CHHUY Huy Interview Record, E3/5283, 31 March 2009, p. 3, ERN (En) 00321197 (saw hundreds of families of NEW People arrive from Phnom Penh); HIEK Naren Victim Complaint, E3/5376, 25 August 2008, p. 6, ERN (En) 00887745 (it took them three to four months to reach Battambang); TAN Hoch Interview Record, E3/5270, 29 January 2009, p. 4, ERN (En) 00284686 (three or four families from Phnom Penh came to live in his house); **Kampong Cham**: HOK Hoeun Interview Record, E3/5256, 23 November 2008, p. 4, ERN (En) 00251304 (evacuees from Phnom Penh arrived in his village); TAY Kimhuon Interview Record, E3/5257, 24 November 2008, p. 3, ERN (En) 00251014 (evacuees from Phnom Penh arrived in Kampong Cham Province); YIM Kimsan Interview Record, E3/5528, 10 December 2009, p. 2, ERN (En) 00421617 (her evacuated relatives came to her village in Kampong Cham Province); **Kampong Chhnang**: CHEY Yeun Civil Party Application, E3/4824, undated, p. 2, ERN (En) 00891213 (they walked for two months until they reached Thnal Village, Boribour District, Kampong Chhnang Province); CHAN Loeu Interview Record, E3/5233, 23 December 2008, p. 2, ERN (En) 00279260 (saw Phnom Penh evacuees arrive to live in different villages in Kraing Lovea, Kampong Chhnang Province); DUK Phau Interview Record, E3/4633, p. 2, ERN (En) 00412138 (many evacuees from Phnom Penh lived in Tbaeng Kphos, Kampong Chhnang Province after 17 April); **Kampong Speu**: T. 4 December 2012 (TOENG Sokha), pp. 58-59 (went to Thnal Dach village); Civil Party SOT Sem Interview Record, E3/4654, 15 October 2009, p. 4, ERN (En) 00400464 (former LON Nol soldier, forced by the Khmer Rouge to head for Neak Loeung; he and his wife lived for a month in different villages in Kreang Ampil Commune, Kampong Speu Province); **Kampong Thom**: AU Hau Interview Record, E3/5255, 18 November 2008, p. 2, ERN (En) 00250043 (Prey Srange village chief in 1975, had the villagers help the evacuees who arrived from Phnom Penh, who were known as the "17 April group" or "new group"); UM Chi Interview Record, E3/5265, 14 January 2009, p. 3, ERN (En) 00282345 (saw the 17 April people coming from Phnom Penh to live in Monkul Village); UT Seng Interview Record, E3/5267, 14 January 2009, p. 2, ERN (En) 00282351 (evacuated from Phnom Penh, he went to live in Kângsăo Village); **Kampot**: KHEAV Run Civil Party

10.2.10. *After Three Days*

486. After the initial three days had passed,[1447] there were no announcements to return to Phnom Penh; rather, evacuees were told to continue on.[1448] Evacuees who

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Application, E3/4750, 1 April 2009, p. 3, ERN (En) 00867598 (travelled to the commune in Kampot Province); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (left Phnom Penh and travelled until Kien Svay); UK Phorn Interview Record, E3/5499, 22 August 2009, p. 3, ERN (En) 00372929 (17 April people came to live in Thnaot Chang Commune, Angkor Chey); **Kandal**: T. 7 February 2013 (PIN Yathay), p. 24 (he and his family arrived at Chheu Khmau, Kandal Province); T. 29 May 2013 (HUO Chanthar), p. 73 (journeyed to Puk Russei Village); T. 6 November 2012 (MOM Sam Oeurn), pp. 11-12, 17-18, 27 (reached Samraong Commune); T. 12 December 2012 (Denise AFFONÇO), pp. 104-105 (arrived in Tuk Veal after one day); T. 29 May 2013 (CHAN Socheat), pp. 43-44 (her family went to Kien Svay District); T. 30 May 2013 (YIM Roumdoul), p. 68 (he and his family went to Kaoch Okhna Tei, Khsach Kandal District, Kandal Province); T. 30 May 2013 (PO Dina), pp. 97, 110-111 (walked until they reached PO Dina's hometown, Kaoh Dach village, Mukh Kampoul District, Kandal Province); **Prey Veng**: T. 27 May 2013 (AUN Phally), pp. 34-35, 38-39 (he and his family went to Preak Pnov Commune, Preak Pnov District in Prey Veng Province); T. 30 May 2013 (NOU Hoan), p. 24 (went to his native village in Prey Veng); T. 23 August 2012 (EM Oeun), p. 74 (In 1975 this Civil Party saw many evacuees from Phnom Penh come to Sector 20 [Prey Veng], where he lived); MAUNG Ret Interview Record, E3/5592, 29 December 2009, p. 3, ERN (En) 00434941 (many people evacuated from Phnom Penh came to her village [Leok Village, Preah Sdach District, Prey Veng Province]); **Pursat**: DUK Ty Civil Party Application, E3/4751, 17 February 2009, p. 3, ERN (En) 00864536 (left Phnom Penh for Prey Tao Commune in Bakan District, Pursat Province); CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 3, ERN (En) 00288200 (former LON Nol soldier, walked out of Phnom Penh and arrived in Pursat Province); HONG Savat Interview Record, E3/5591, 14 December 2009, p. 3, ERN (En) 00426487 (his family was transferred to Pursat Province); **Svay Rieng**: T. 27 May 2013 (SOU Sotheavy), pp. 11, 25 (traveled to Champa Pagoda, Kor Ki District, before continuing on); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 2, ERN (En) 00399167 (after 17 April 1975 returned to his place of birth [Ta Nar Village, Svay Toea Commune, Kampong Rou District, Svay Rieng Province]); KHOEM Samon Interview Record, E3/5260, 11 December 2008, p. 2, ERN (En) 00327160 (noting that people arrived in her village from Svay Rieng and Phnom Penh; large houses had to accept 17 April people to live in with them); **Takeo**: T. 23 November 2012 (CHAU Ny), p. 48 (reached Bati District, Trapeang Sab Commune, Takeo Province); T. 19 October 2012 (YIM Sovann), p. 93 (her and her family reached Pouthi Ban, Village Number 5 where they stayed until early 1976); T. 20 May 2013 (IENG Phan), p. 34 (his relatives in Phnom Penh were evacuated to their native village in Tram Kak District, Takeo Province); SEN Phap Victim Complaint, E3/5391, 19 November 2008, p. 6, ERN (En) 00869808 (went to Takeo Province); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (walked until they reached an unfamiliar place bordering South Vietnam, called Preah Bat Choan Chum, Kiri Vong District, Takeo Province).

[1447] *See* Section 10: Movement of the Population (Phase One), para. 465.

[1448] T. 5 December 2012 (KIM Vanndy), pp. 98-99 (his mother asked a soldier after the three days and she was told to continue to her native village), 102-103 (after the three days there was no announcement made for people to return to Phnom Penh, there was just an announcement for people to return to their respective native villages); T. 22 October 2012 (CHUM Sokha), pp. 43, 82, 99 (after the initial three days had passed, in response to their query, a Khmer Rouge comrade told CHUM Sokha's grandparents that they had to leave for seven days because Angkar had not cleansed the city properly yet, and they were instructed to go to their native villages rather than return to the city; after seven days, CHUM Sokha's grandparents asked again but they were not returned to the city but allowed to go to their villages); T. 5 December 2012 (PECH Srey Phal), p. 22 (near Stung Meanchey, before Chamkar Daung, she heard it announced that people could move on to their hometowns but were not allowed to return); *See also*, T. 6 November 2012 (MOM Sam Oeurn), p. 18 (after three days we did not receive any information about our return).

made to return to Phnom Penh were threatened and told to move on.[1449] Those who persisted in trying to return to Phnom Penh were shot.[1450]

487. Accordingly, evacuees continued and travelled onwards for anywhere between several days and several weeks.[1451] Conditions throughout the journey were miserable and most lacked even the most basic of equipment with which to cook.[1452] Many people had limited food and water supplies or went without.[1453] Many were forced to

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[1449] T. 5 December 2012 (PECH Srey Phal), p. 21 (saw Khmer soldiers stop three people walking back toward Phnom Penh during the evacuation and tell them that if they stepped out of line they would be killed).

[1450] T. 23 October 2012 (LAY Bony), p. 91 (was told that dead bodies they saw along the road were shot because those people wanted to return back); T. 24 October 2012 (LAY Bony), p. 26 (soldiers said that the evacuees had to just proceed ahead; and if they returned, then they would be killed; she heard gun shots).

[1451] T. 12 December 2012 (Denise AFFONÇO), pp. 104-105 (arrived on Tuk Veal Island after three days); T. 6 November 2012 (MOM Sam Oeurn), pp. 15-16, 19 (after 3 days, MOM and her family arrived at Samraong Commune, 40 kilometres from Phnom Penh where they stayed approximately 2 nights before being ordered to go to Preaek Koy, approximately 10 or 20 kilometres further from Samraong); T. 29 May 2012 (NY Kan), p. 93 (it took the evacuees several days before reaching their destination); T. 23 November 2012 (CHAU Ny), p. 48 (walked for 10 days and reached Bati District, Trapeang Sab Commune, Takeo Province); T. 19 October 2012 (YIM Sovann), pp. 83 (continued with her family along National Road No. 3 for five to six days until Stung Kampong Tuol), 93 (it took one month for them to reach Pouthi Ban, Village Number 5 where they stayed until early 1976); T. 7 February 2013 (PIN Yathay), p. 24 (10 days; he and his family arrived at Chheu Khmau on 27 April); T. 4 December 2012 (TOENG Sokha), pp. 41-42, 44 (they continued south and reached Kbal Thnal the following day, and were then instructed to begin heading east), 58-59 (it took about 11 days and nights to reach Thnal Dach village, including the times that they stopped over at various locations); T. 27 May 2013 (AUN Phally), pp. 34-35, 38-39 (it took 15 days by foot for him and his family to reach their destination in Preak Pnov Commune, Preak Pnov District in Prey Veng Province); T. 29 May 2013 (HUO Chanthar), p. 73 (the journey to Puk Russei Village took 15 days); T. 27 May 2013 (SOU Sotheavy), pp. 11, 25 (travelled until she reached Champa Pagoda in Kor Ki District on 30 April 1975 where she stayed for two weeks before continuing on); T. 30 May 2013 (NOU Hoan), p. 24 (took approximately one month to reach his native village in Prey Veng Province); T. 22 October 2012 (CHUM Sokha), pp. 47, 104 (travelled for approximately a month before they reached his father's home village); T. 24 October 2012 (LAY Bony), p. 7 (their trip took about a month).

[1452] T. 5 December 2012 (KIM Vanndy), pp. 100-103 (along the road, on the east side of the river, the situation was miserable; the Civil Party's family lacked everything, food and even a cooking pot, they survived from day to day hoping the situation would not last long); T. 30 May 2013 (PO Dina), p. 98 (they did not have food, or even a spoon or cooking pot along the way, life was miserable); T. 6 November 2012 (MOM Sam Oeurn), p. 11 (her and her family exchanged goods for a rice-cooking pot).

[1453] T. 22 October 2012 (CHUM Sokha), pp. 45, 47 (during the month they travelled they struggled to find clean water to drink or cook rice); T. 22 November 2012 (OR Ry), p. 101 (her younger siblings cried as they were hungry, and her mother pleaded that they be patient until they reached their native village); T. 5 December 2012 (PECH Srey Phal), p. 24 (when the food that they had brought for a three-day period was almost gone, they cooked only porridge so that they could save some rice); T. 31 May 2012 (SAKIM Lmut), pp. 6-8 (in the first cooperative he visited there was no proper arrangement for people to have proper food and every family had to find their own food to feed their own family); T. 6 November 2012 (MOM Sam Oeurn), pp. 13, 16 (by 19 April, her family had nothing to eat of their own food supplies; on 20 April, they were given food by a local house owner); T. 19 October 2012 (YIM Sovann), p. 84 (there was no money, no food, no water along the road).

exchange whatever belongings they had including clothes or to beg for food,[1454] searched for plants, vegetables and insects to eat, and drank dirty water from ponds along the way to survive.[1455]

488. Evacuees were forced to improvise makeshift accommodation along the way: they variously rested along the roadside, at empty marketplaces, at the entrance of pagodas, used abandoned houses, or sometimes sheltered under a tree.[1456] After Civil

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[1454] T. 23 October 2012 (LAY Bony), p. 94 (begged for corn from Base People in exchange for some of the possessions that she had); T. 4 December 2012 (TOENG Sokha), p. 45 (had to exchange their gold and jewellery for some foodstuff and things they needed to survive); T. 23 November 2012 (CHAU Ny), p. 55 (during the first few months, they had to exchange belongings for food to survive on); T. 25 April 2013 (RUOS Suy), p. 89 (people had to stop midway to exchange their clothes for some food); Refugee Accounts, E3/4590, 27 May 1976, p. 199, ERN (En) 00820517 (POK Sareth stated that they survived by exchanging their belongings for rice for the next six months); CHHEUM Kong Civil Party Application, E3/4917, undated, p. 2, ERN (En) 00890967 (they exchanged clothes or whatever belongings they had for rice to survive the journey); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (when they ran out of food, they traded their clothing for rice or ask for rice at passing villages); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (having nothing to eat along the way, they begged for food).

[1455] T. 22 October 2012 (CHUM Sokha), p. 45 (if they could not find drinking water or water to cook the rice, they had to try to locate a pond or a lake nearby so that they could use the water); T. 6 November 2012 (MOM Sam Oeurn), p. 13 (recounted how her and her family picked and cooked wild vegetables for food); T. 29 May 2013 (HUO Chanthar), p. 73 (was so desperate for water on the second day after evacuation that she drank from a pond, even though it smelled terrible and appeared contaminated); T. 19 October 2012 (YIM Sovann), p. 92 (there was little water so they were forced to drink from a pond); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, ERN (En) 00517766 (in order to survive, people feed themselves with grass broth, grated banana stems and roots); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, p. 7, ERN (En) 00873844 (their mother searched for plants and vegetables to make soup to eat because they ran out of rice); SOTH Navy Civil Party Application, E3/4921, 23 June 2009, p. 5, ERN (En) 00858006 (her parents struggled to feed the family with tubers and insects, and anything they caught when they went hunting); SENG Chon Interview Record, E3/5562, 16 October 2009, p. 4, ERN (En) 00400455 (when they were thirsty they drank dirty water from ponds along the way).

[1456] T. 22 October 2012 (CHUM Sokha), pp. 45, 99-100 (they rested along the road, or at the entrance of pagodas or sometimes under a tree; nobody gave them specific instructions as to where to gather and rest); T. 4 June 2013 (BAY Sophany), p. 9 (along the way they stopped and rested at empty houses that belonged to Chinese families); T. 5 December 2012 (PECH Srey Phal), pp. 21-22 (spent the first night at Stung Meanchey on the roadside; some slept on a bed in market stalls and people could even sleep on the roads as there was no traffic), 24 (they rested wherever they reached that night and used tree leaves to cover the ground and sleep on); T. 30 May 2013 (PO Dina), p. 96 (they slept on the way and just went on without knowing where they were heading); T. 6 November 2012 (MOM Sam Oeurn), pp. 11-12 (recounted how her and her family slept on the floor of a pagoda); T. 22 November 2012 (OR Ry), p. 101 (during the night, thinking they were taking a shortcut, they slept on the ground in the middle of the forest swamped by mosquitoes); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (they slept in an empty house or sometimes under the tree); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (they slept on the bare ground); KEO Roy Civil Party Application, E3/4838, undated, p. 3, ERN (En) 00893366 (they would sleep anywhere, sometimes under trees, and, sometimes, in the rain, hugging their children soaked by the rain); SENG Chon Interview Record, E3/5562, 16 October 2009, p. 4, ERN (En) 00400455 (they slept on mattresses on the road without mosquito nets and were bitten by mosquitos at night); NORNG Saran Civil Party Application, E3/4653, 25 February 2009, p. 3, ERN (En) 00864058 (slept in fields and pagodas; some old people could not walk and had to sleep along the road); NEANG

Party BAY Sophany and her children were chased to the outskirts of Traeuy Sla village, they built a shelter out of palm tree leaves and tree branches.[1457] Civil Party TOENG Sokha described how she learned one morning that they had slept next to a dead body and had to move somewhere else to spend the next night.[1458]

10.2.10.1. *Violence Suffered*

489. The journey of most evacuees was marked by terror and threats or incidents of violence by Khmer Rouge soldiers. There was evidence of some evacuees walking a certain distance at gunpoint,[1459] and of others being beaten by Khmer Rouge.[1460] Civil Party SOU Sotheavy attested to the rape of a friend.[1461]

490. There were also numerous instances of Khmer Rouge soldiers shooting and killing civilians during the course of the evacuation, with victims including a famous film actor, several people driving vehicles and even those who simply became too weak to continue.[1462] CHHENG Eng Ly recounted seeing a Khmer Rouge soldier tear

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Muong Sokhon Civil Party Application, E3/4681, 30 May 2008, p. 6, ERN (En) 00850906 (they walked about one month, sleeping out in the open, by the wayside); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (they cooked and slept on the pavement without a destination); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, p. 7, ERN (En) 00873844 (their father built a small hall roofed with thatch).

[1457] T. 4 June 2013 (BAY Sophany), pp. 10-11.

[1458] T. 4 December 2012 (TOENG Sokha), p. 43. *See also*, Refugee Accounts, E3/4590, p. 51, ERN (En) 00820369 (S, the interviewee, stated that he only travelled a few kilometres during the day, then slept at the side of the road on top of recently buried bodies; on one occasion when he bathed in the river, people screamed and left the water because there was a dead body floating in it, although it did not bother him and he continued bathing).

[1459] T. 27 May 2013 (AUN Phally), p. 34 (he and his parents and four siblings were forced at gunpoint to travel along Monivong Boulevard until they reached the Kbal Thnal Bridge and crossed to National Road No. 1); LY Ream Civil Party Application, E3/4980, undated, p. 2, ERN (En) 00893407 (they travelled by foot while being followed by Khmer Rouge soldiers who would often shoot their guns to threaten and force them to continue their travel).

[1460] T. 19 October 2012 (YIM Sovann), p. 79 (in front of Preah Puth Pagoda she saw Khmer Rouge soldiers beating people with a rifle); T. 5 December 2012 (KIM Vanndy), pp. 89-90 (saw a Khmer Rouge soldier hit a man who was on his knees, begging for permission to return to find his children, on his back with a rifle); PAL Rattanak Civil Party Application, E3/4839, undated, p. 3, ERN (En) 00893371 (recounted how three or four teenage soldiers armed with AK47 guns and two 40B rocket launchers, were screaming at him to go, before they kicked and hit him with their gun handles causing him to lose consciousness. He regained consciousness and continued walking the following day); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (those who refused to leave were hit with their rifles).

[1461] T. 27 May 2013 (SOU Sotheavy), pp. 11-12 (she encountered a friend at Niroth Pagoda who was soaked in blood; the friend told her that she had been raped and assaulted when a bullet had been inserted into her anus); *cf.* T. 5 November 2012 (SUM Chea), p. 58 (did not hear of any sexual assaults against women during the evacuation).

[1462] For example, T. 19 October 2012 (YIM Sovann), pp. 83, 85 (saw Khmer Rouge soldiers shoot dead a driver of a car); T. 29 May 2013 (THOUCH Phandarasar), p. 5 (heard a gunshot and saw a man

apart a crying baby who was crawling on his dead mother's body by Monivong Bridge.[1463] Civil Party YIM Sovann recalled seeing Khmer Rouge soldiers shoot open a locked door to a house and then shoot the people who came out at O'Russey Market.[1464] Another victim described how she was pushing her husband, a former

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who had just been killed); T. 27 May 2013 (YOS Phal), p. 76 (saw Khmer Rouge soldiers shoot the driver of a GMC truck at Chen Dam Dek Pagoda while he sat in the driver's seat); T. 6 November 2012 (MOM Sam Oeurn), p. 15 (witnessed the shooting of people along the street); T. 22 October 2012 (CHUM Sokha), p. 92 (Khmer Rouge soldiers shot civilians as they tried to break into a warehouse to take rice; many were injured and died); MEAS Saran Civil Party Application, E3/3966, 17 September 2008, p. 3, ERN (En) 00362196 (saw many people unreasonably killed along the road); MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, p. 4, ERN (En) 00944523 (heard that at Preah Angk Duong hospital where his father was a doctor, Khmer Rouge forces disconnected the intravenous syringes and drips of the wounded and brutally killed some people on their hospital beds); KUNG Narin Civil Party Application, E3/4773, undated, p. 2, ERN (En) 00890598 (saw the Khmer Rouge shoot to death six people, but did not know why); NORNG Ponna Interview Record, E3/5131, 14 November 2007, p. 3, ERN (En) 00223185 (outside the pagoda they were shooting people to death); KEV Chhem Victim Complaint, E3/5407, 22 October 2008, p. 6, ERN (En) 00828255 (during the evacuation, he saw Khmer Rouge coerce and shoot people to death, killing at will); Refugee Accounts, E3/4590, pp. 30, ERN (En) 00820348 (on an unknown date Mr. Worker at Sonexim stated that the Khmer Rouge beheaded Mr Kong Savuon, a famous film actor, and left his body on the road; nobody dared remove the body for fear of reprisals), 205, ERN (En) 00820523 (on 3 June 1976 PECH Ling Kong stated that the seriously ill in the hospitals were killed inside the hospital while the disabled were driven away in lorries, and dumped and buried in bomb craters); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (the Khmer Rouge guarded the Kbal Thnal Bridge in the west, banned people from crossing the bridge and shot to death those who dared to swim across the river); PAL Rattanak Civil Party Application, E3/4839, undated, p. 2, ERN (En) 00893370 (some were pulled or pushed off buildings and died mournfully); LY Ream Civil Party Application, E3/4980, undated, p. 2, ERN (En) 00893407 (during trip from native village on outskirts of Phnom Penh to Kirirom in Kampong Speu Province, saw many people shot dead by Khmer Rouge troops; people who could no longer continue walking, were shot dead one by one along the way); TIENG Sokhom Victim Complaint, E3/5402, 23 October 2008, p. 6, ERN (En) 00870347 (saw a person shot to death by militiamen for having picked mangoes to eat; the Khmer Rouge killed people randomly for unknown reasons); KEV Chhem Victim Complaint, E3/5407, 22 October 2008, p. 6, ERN (En) 00828255 (during the evacuation saw the Khmer Rouge coerce and shoot people to death, killing at will); CHOU Kim Lan Victim Complaint, E3/5469, 27 August 2008, p. 6, ERN (En) 00746218 (during the evacuation, she saw Khmer Rouge soldiers shoot or drive over people who were also being evacuated without known reasons); SUN Henri Victim Complaint, E3/5457, 20 September 2009, p. 6, ERN (En) 00474754 (saw a Khmer Rouge soldier shoot and kill the driver of the boat that carried SUN Henri's family across the river in front of Mr. Sun and his family); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (some people who did not follow their orders by travelling on different paths were shot dead); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 3, ERN (En) 00877009 (armed with AK47s, the Khmer Rouge soldiers did not hesitate to execute those who did not follow the indicated route or strayed from it; he witnessed such executions); *See also*, T. 7 June 2013 (Sydney SCHANBERG), pp. 4-5 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 72, ERN (En) 00898280, noted foreigners who trickled into the embassy in subsequent days carried reports of executions, but none of the latter were eyewitness accounts); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, ERN (En) 00517765 (the general reported that those along the way who were no longer willing or able to follow others were executed).

[1463] T. 29 May 2013 (CHHENG Eng Ly), pp. 92, 98.

[1464] T. 19 October 2012 (YIM Sovann), p. 81.

LON Nol soldier who was ill and unable to walk, in a cart when the Khmer Rouge took the cart from her, beat her husband and cut his throat in front of her.[1465]

10.2.11. *Conditions Suffered*

491. Moreover, in addition to the uncertainty about the future and their fates and the violence and terror suffered during the course of the evacuation,[1466] those evacuated experienced terrible conditions throughout their journey including extreme heat and a lack of sufficient food, clean water, medicine or adequate accommodation.[1467] Expelled at the height of the hot season[1468] and forced to walk for days if not weeks on end, evacuees, and young children in particular, soon suffered from exhaustion and could barely walk.[1469] SOU Sotheavy described how they had to walk day and night

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[1465] SAU Sary Supplementary Information, E3/4951, 15 June 2010, p. 1, ERN (En) 00874077.

[1466] *See* Section 10: Movement of the Population (Phase One), paras 485, 489-490.

[1467] T. 30 July 2012 (ROCHOEM Ton), pp. 69-71 (heard from the base and from soldiers that those that were evacuated from Phnom Penh endured a lot of difficulties); T. 22 October 2012 (CHUM Sokha), pp. 104-105 (they were deprived of proper sleeping place and food, they had to find stones to make a stove for cooking and find water to cook our food; as it was the dry season it was difficult to find crabs in lakes or ponds; his younger sibling had swollen legs and feet and as they did not have medicine and there was no medic, they had to try to find herbal leaves to treat her); T. 30 May 2013 (NOU Hoan), pp. 6-7 (the weather was very hot, as it was the middle of the dry season; as people did not bring many belongings, some resorted to using banana stalk for shoe replacements; there were flies everywhere, no public toilets, and people had to resort to go into the woods to relieve themselves; the main challenge was the lack of food and the lack of medical treatment; they did not know where to go for food or medicine; rice was very expensive); YIM Sovann Interview Record, E3/5787, 27 August 2009, p. 4, ERN (En) 00379312 (during the walk, nothing was provided to them; there was no food, water and medicine); CHHENG Eng Ly Civil Party Application, E3/5736, 7 January 2010, p. 7, ERN (En) 00922084 (it was 40 degrees Celsius in the shade, April is the hottest month in Cambodia, we were walking aimlessly, with no water, food or shelter and the streets were teeming with people); PREAB Ken Victim Complaint, E3/5406, 22 October 2008, p. 6, ERN (En) 00749400 (at night they slept in the open air, exposed to a heavy population of mosquitoes); SAIDNATTAR Roshane Civil Party Application, E3/5076, 11 December 2009, p. 6, ERN (En) 00857597 (along the way, they stepped over bodies; it was very hot and it was the dry season); SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178 (they faced a lot of difficulties and hardships during the journey, as their children were still small, and they had to walk barefoot, without any means of transport, under the hot sun and without sufficient drinking water); PAK Son Victim Complaint, E3/5432, 12 May 2009, p. 6, ERN (En) 00872991 (her father faced a lot of hardships after leaving Phnom Penh as there was nothing to eat, the journey was long, and her mother had a chronic disease).

[1468] The Chamber notes that the hot season averages 35 degrees Celsius but may often reach, if not surpass, 40 degrees Celsius.

[1469] T. 19 October 2012 (YIM Sovann), p. 87 (a child at the time, they had to travel on foot the whole day and were exhausted); T. 5 December 2012 (KIM Vanndy), pp. 100-103 (a child at the time, his family had been travelling for three or four days and their feet were so tired they could barely walk; when they could no longer walk, they rested in that location for a day or two to gain some strength and then continued); T. 27 May 2013 (AUN Phally), p. 44 (could see that people had a lot of difficulties during the evacuation, young and old people alike struggled to walk on because of tiredness and lack of food); T. 29 May 2013 (HUO Chanthar), p. 72 (some disabled people, old and young people, they were exhausted, young children were crying because their feet hurt); T. 12 December 2012 (Denise AFFONÇO), pp. 103-104 (very many elderly people were struggling to walk and people were

and were only allowed to stop when they reached their destination; she went for several days without food and was not given enough time to rest.[1470] As a result, many developed swollen limbs.[1471] Many evacuees were soon rendered weak or fell sick due to the conditions; some even died.[1472] Civil Party YOS Phal recounted how his health deteriorated, becoming emaciated and developing a fever during the course of his journey to Ph'av District. Having no access to proper medicine, he picked bitter leaves along the road, pounded, cooked and drank them as a form of medicine.[1473] Civil Party LAY Bony also struggled, having given birth just prior to the evacuation, while her youngest daughter developed bowel problems and severe diarrhoea and all her family members suffered high fevers.[1474]

492. Pregnant women gave birth along the road without medical assistance, and some miscarried.[1475] Nevertheless, under all circumstances, evacuees were forced to

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experiencing great difficulty to move); SVAY Neth Civil Party Application, E3/4722, 10 September 2008, p. 5, ERN (En) 00463052 (the trip was extremely difficult as she had just delivered her baby two weeks earlier; she had to walk for hundreds of kilometers without enough water and food and under the summer's heat; her little children cried often because they were hungry and exhausted from walking); POK Sa Em Civil Party Application, E3/4724, 8 December 2008, p. 3, ERN (En) 00487675 (she suffered a great deal as she had just delivered a baby and her other children were very young; still worse, there was no decent water, food or proper temporary shelter; very frequently, her young children and other young children were heard crying out loud because they were tired and hungry while walking under the scorching sun; when her legs became so weak that she could no longer walk her husband invented an improvised cart on which to carry her).

[1470] T. 27 May 2013 (SOU Sotheavy), p. 16.

[1471] T. 22 October 2012 (CHUM Sokha), pp. 40-41, 105 (his younger sister could not walk, as her legs were swollen; his mother had to exchange jewellery and clothes in exchange for his sister to be put onto a cart so that she need not walk); NGOUN Tin Civil Party Application, E3/5004, 19 July 2009, p. 3, ERN (En) 00871742 (after travelling for five days, some people's feet were swollen and they could no longer walk); SOU Soeun Interview Record, E3/5294, 5 July 2009, pp. 3-4, ERN (En) 00360111-12 (a Khmer Rouge village chief, noted that those who arrived had swollen limbs as they were not used to such long walks).

[1472] T. 30 May 2013 (PO Dina), p. 96 (they walked until they felt faint, she and her husband both fainted as they were physically weak, they were bitten and life was miserable); T. 4 June 2013 (SENG Sivutha), p. 97 (she sometimes became so exhausted and thirsty under the extreme heat); T. 27 May 2013 (YOS Phal), p. 76 (saw plenty of people who were sick, young and old, before he reached Preaek Kdam); T. 4 June 2013 (BAY Sophany), pp. 9-10 (it was the hottest time of year, and it took them several days to leave Phnom Penh; she and her children had to take shelter under a mango tree one rainy night after which they all fell sick with fever); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, ERN (En) 00517766. *See also*, Section 10: Movement of the Population (Phase One), paras 497-498 concerning evacuees who died as a result of the conditions.

[1473] T. 27 May 2013 (YOS Phal), pp. 72, 77.

[1474] T. 23 October 2012 (LAY Bony), pp. 94-95 (her younger daughter had bowel problems because her stomach could not sustain the food, and they had no medicines to treat her), 93 (they stopped for 2 weeks at pagoda because she had recently given birth and was unwell); T. 24 October 2012 (LAY Bony), pp. 10-11 (her daughter had severe diarrhea and every member of their family got ill with high fevers).

keep moving, even at the price of abandoning weak or elderly family members by the roadside.[1476] Civil Party PECH Srey Phal described how Khmer Rouge soldiers always pushed the evacuees onwards and would not allow people to stay behind with elderly family members who could not walk as 'traffic chaos' would result.[1477] Civil Party SENG Sivutha saw an old man lying almost motionless on the road with ants crawling over his body and into his eyes, and testified that it was the elderly in particular who were deserted along the roadside.[1478]

493. Even those who had money could not use it to buy food or medicine as Khmer Rouge soldiers announced that money had become useless under the new leadership.[1479]

[1475] T. 24 October 2012 (LAY Bony), pp. 8, 36 (saw screaming mothers in childbirth); T. 29 May 2013 (THOUCH Phandarasar), p. 6 (saw women give birth in the road); T. 6 November 2012 (MOM Sam Oeurn), pp. 9, 27 (witnessed a woman having a miscarriage due to the stress of the forced movement), 48 (another lady miscarried after stepping on something and falling over. Nobody came to help her because nobody dared to stop or protest); KAUN Sunthara Civil Party Petition, E3/4671, 29 April 2008, p. 3, ERN (En) 00239761 (pregnant at the time of the evacuation, she delivered a baby boy without receiving any medical care or food three days in Setbau village); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (some pregnant women had to deliver their babies on the way, after which the Khmer Rouge forced them to continue travelling); TIENG Sokhom Victim Complaint, E3/5402, 23 October 2008, p. 6, ERN (En) 00870347 (saw many pregnant women give birth without medical assistance).

[1476] T. 30 May 2013 (NOU Hoan), pp. 6-7 (they were forced by Angkar to just keep going, so some of them had to leave their sick family members); T. 14 November 2012 (MEAS Saran), p. 107 (a family had to abandon an old person who was left on a bed along the side of the road); T. 23 November 2012 (CHAU Ny), p. 47 (recalled observing sick people who fell and were sitting on the side of the road and nobody could help anybody else); NGOUN Tin Civil Party Application, E3/5004, 19 July 2009, p. 3, ERN (En) 00871742 (the Khmer Rouge ordered the people to move quickly, people could not stop and wait for their old and sick family members who could no longer walk, they were ordered to leave their old family members); MOM Sam Oeurn Statement (Annex 4), E3/3963, undated, p. 2, ERN (En) 00242249 (her eldest daughter blacked out, so they asked the Khmer Rouge soldiers who witnessed this to take a short rest until she recovered; when she became conscious after half an hour, another Khmer Rouge soldier signalled them to move on); CHEY Yeun Civil Party Application, E3/4824, undated, p. 2, ERN (En) 00891213 (they were forced to keep moving forwards and were not even allowed to rest even though it was very hot); SOTH Navy Civil Party Application, E3/4921, 23 June 2009, p. 5, ERN (En) 00858006 (long journey on foot on main roads, dirt roads and in the jungle, could not stop); SAIDNATTAR Roshane Civil Party Application, E3/5076, 11 December 2009, p. 6, ERN (En) 00857597 (the Khmer Rouge kept pushing them to walk faster and very late into the night); PREAB Ken Victim Complaint, E3/5406, 22 October 2008, p. 6, ERN (En) 00749400 (they were continually forced to go on); EAM Teang Victim Complaint, E3/5482, 3 February 2010, p. 7, ERN (En) 00824222 (saw a great number of elderly and sick people abandoned along the street between Lok Sang Hospital and Pochentong).
SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (the Khmer Rouge forced pregnant women who had just delivered their babies along the way to continue traveling).

[1477] T. 5 December 2012 (PECH Srey Phal), pp. 19-20, 25.

[1478] T. 4 June 2013 (SENG Sivutha), p. 105.

[1479] T. 22 November 2012 (OR Ry), pp. 100-102 (wanted to buy food but was told that money was no longer accepted); T. 23 October 2012 (LAY Bony), p. 87 (when she left the city, she heard from people

10.2.12. *Assistance Offered*

494. The evidence of Witness KHIEV Neou, a monk, indicated a degree of preparation for the welfare of the evacuees *en route* to the countryside. KHIEV Neou saw Khmer Rouge cadres travelling and organising accommodation for the evacuees,[1480] Several other witnesses also gave evidence of instances of assistance, primarily transport,[1481] although these appear to have been sporadic. Indeed, one

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that they did not use bank notes anymore); T. 24 October 2012 (LAY Bony), p. 24 (their money was no longer used); T. 22 October 2012 (CHUM Sokha), pp. 45-46 (2 or 3 days after the invasion of Phnom Penh, he heard an announcement that there would be no more circulation of money); T. 30 July 2012 (ROCHOEM Ton), pp. 69-71 (saw one family being evacuated carrying two bags of banknotes and told them not to bother because in the Liberated Zone no banknotes were used); T. 29 May 2013 (HUO Chanthar), p. 72 (heard rumours that the currency was being abolished; she tried to keep her banknotes but it turned out to be useless); T. 7 February 2013 (PIN Yathay), p. 25 (at the beginning, people were able to exchange goods with currency they had but further away from Phnom Penh riel currency was no longer accepted); T. 30 May 2013 (NOU Hoan), p. 7 (they did not know where to go for food or medicine and the money they had was no longer used); T. 5 December 2012 (PECH Srey Phal), pp. 26-27 (about one kilometre after the checkpoint past Chamkar Daung her family was told money was no longer circulated and the soldiers took their money and burned it. At that point her family thought they would die as they relied on that money and they no longer had any way of buying food or other stuff); T. 12 December 2012 (Denise AFFONÇO), p. 73 (the streets were littered with banknotes). *See also*, S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 101, ERN (En) 00898309.

[1480] T. 20 June 2012 (KHIEV Neou), pp. 111-112 (a monk at the time, stated that while he did not inspect everywhere and cannot say generally about arrangements for the people, he thought there was an arrangement in place as he saw Khmer Rouge cadres travelling and organising accommodation for the evacuees); *See also*, French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, ERN (En) 00517766 (refers to "collection points" where evacuees received rice once or twice a week, although it is not clear to which part of Cambodia he refers).

[1481] T. 22 October 2012 (CHUM Sokha), p. 99 (a former LON Nol soldier, stated that although the evacuation was largely done by one's own resources, at Bar Borng Commune they were transported by a vehicle captured by the Khmer Rouge soldiers to Samraong District; that was the only occasion they were transported on a vehicle); CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 3, ERN (En) 00274680 (some Khmer Rouge cadres and base people near Kampong Sach bridge felt sorry for him and gave him some rice); MATT Sa Victim Complaint, E3/5326, 25 July 2008, p. 8, ERN (En) 00842258 (was evacuated from Phnom Penh in trucks driven by Khmer Rouge soldiers); HENG Nget Victim Complaint, E3/5364, 18 August 2008, p. 6, ERN (En) 00869916 (he was evacuated and requested a ride on a Khmer Rouge military vehicle, although after Baek Chan everyone was ordered to walk); Refugee Accounts, E3/4590, pp. 50, ERN (En) 00820368 (on an unknown date, S, together with all the Khmers who had also been expelled from the Embassy, were taken to Lambert Stadium; those who remained at the stadium overnight asked a Khmer Rouge official for food, who killed a pig for them; when S refused to leave on foot and asked for a truck, which he was given), 205, ERN (En) 00820523 (on 3 June 1976 PECH Ling Kong stated that they deployed all forms of transport, on land and by river, to ensure that people vacated Phnom Penh as swiftly as possible); U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, paras 2, ERN (En) 00495557 (reporting that an evacuee stated that sometimes food rations were available but in some places, not only was no food provided, but the Khmer Rouge confiscated the marchers' extra clothing), 3, ERN (En) 00495557-58 (reporting that after cholera broke out, the KC [Khmer Communists] inoculated marchers with two kind of vaccines: one from the Pasteur Institute for cholera, and the other "BGI medicine", a panacea used against every illness or wound which was not effective against cholera).

The Khmer Rouge also gave some limited assistance to those at the French Embassy: T. 28 January 2013 (Al ROCKOFF), p. 65 (the Khmer Rouge allowed the French Embassy to have one pig a day and

evacuee acknowledged that it was a privilege that the group of high-class families with which she found herself evacuated was provided with food and water during the one week they stayed at the Royal University of Phnom Penh, and that they were evacuated to Pursat by truck.[1482]

495. In contrast, numerous witnesses and civil parties recounted how the Khmer Rouge soldiers along the way did not provide them with any food, water, medicine or even transport, not even to assist the evacuees who were weak, elderly or injured.[1483]

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vegetables); T. 9 April 2013 (François PONCHAUD), p. 72 (at the French Embassy, the Khmer Rouge distributed sufficient rice and water); French Ministry of Foreign Affairs Incoming Telegram, Subject: Situation in Phnom Penh on 18 April at 15:00, E3/2690, 18 April 1975, ERN (En) 00488011 (reporting that Khmer Rouge leaders committed to furnish the Embassy premises with security and supplies according to their means).

[1482] Civil Party HONG Savat Interview Record, E3/5591, 18 December 2009, pp. 3-4, ERN (En) 00426487-88 (the Khmer Rouge arrested her and her family and took them to the Royal University of Phnom Penh, along Russian Federation Boulevard, where they stayed for one week along with another one hundred families considered to be rich, high class or dignitaries in society; they were treated fairly, provided with food and water before being evacuated to Pursat by truck; her family was allowed to sit in the truck's cabin and she acknowledged this was a privilege).

[1483] T. 9 January 2013 (UNG Ren), p. 44 (there was no form of transportation for the evacuees); T. 5 December 2012 (KIM Vanndy), pp. 88 (did not see soldiers taking care of the wounded, they did not pay attention to the sick), 98 (the Khmer Rouge soldiers along the road did not give them anything), 103 (there was no transportation, no assistance was offered by the Khmer Rouge soldiers or the Base People); T. 22 November 2012 (OR Ry), p. 101; T. 23 November 2012 (OR Ry), p. 15; T. 12 December 2012 (Denise AFFONÇO), pp. 74, 103; T. 14 November 2012 (MEAS Saran), pp. 107-108; T. 22 November 2012 (MEAS Saran), p. 43; T. 5 December 2012 (PECH Srey Phal), p. 24 (they were not given food, water, shelter or medicine); T. 4 December 2012 (TOENG Sokha), pp. 43, 59 (not even a single thing was given by the Khmer Rouge); T. 19 October 2012 (YIM Sovann), pp. 84-85, 92; T. 31 May 2012 (SAKIM Lmut), p. 6; T. 27 May 2013 (AUN Phally), p. 38 (nobody gave them anything); T. 7 February 2013 (PIN Yathay), p. 25 (Angkar did not care about the welfare or well-being of us or to give us or assisted us with any medicine); T. 27 May 2013 (SOU Sotheavy), p. 16 (they did not have medicine when they fell ill); T. 30 May 2013 (NOU Hoan), p. 6 (those who were sick could not seek help from anyone); T. 22 October 2012 (CHUM Sokha), pp. 99-100 (leaving Phnom Penh was done at one's own ability, nobody took care of the patients, they would stay there and die or bleed to death; they chose to rest along the road by themselves as nobody gave them specific instructions as to where to gather and rest); T. 23 October 2012 (LAY Bony), p. 94 (did not see any Khmer Rouge soldiers taking any steps in taking care of the people); T. 6 November 2012 (MOM Sam Oeurn), pp. 13 (there was no food distribution), 47 (no transport and no distribution of water, food or medicine); T. 28 January 2013 (Al ROCKOFF), p. 65 (did not see any assistance provided by the Khmer Rouge except for food provided to people in the French Embassy); T. 10 April 2013 (François PONCHAUD), p. 12 (the Khmer Rouge did not tell the population that the people would be receiving any assistance during their journeys); T. 11 April 2013 (François PONCHAUD), pp. 21-22; T. 5 June 2013 (Sydney SCHANBERG), p. 11 (they did not provide any transport, food or water or any kind of aid that he saw to the evacuees). *See also*, Civil Party SOU Sotheavy Interview Record, E3/4608, 13 October 2009, p. 3, ERN (En) 00426416 (they did not receive anything at all from the Khmer Rouge); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 4, ERN (En) 00377359 (they did not receive any assistance); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 5, ERN (En) 00569477 (the Khmer Rouge gave them no food); Refugee Accounts, E3/4590, p. 38, ERN (En) 00820356 (R, the interviewee, stated they were worried about finding food as the Khmer Rouge did not provide any; while at Neak Loeung, there were 3 truckloads of medicine, they were not distributed – rather it was said they took it to Vietnam).

According to ROCHEOM Ton who guarded the April 1975 meeting at which the plan to evacuate of Phnom Penh was discussed, details such as how to feed people or to care for the elderly, children, or the sick during the evacuation were not considered during this meeting.[1484]

496. Former Khmer Rouge soldiers involved with the evacuation confirmed that their respective units did not help or offer any assistance to those evacuees leaving the city, or receive instructions to do so.[1485] SUM Chea confirmed that evacuees were to fend for themselves as there was no policy to assist them. Indeed his battalion did not provide food or water to the evacuees as the soldiers themselves could not afford enough food to eat.[1486] Accordingly, the Chamber is satisfied that, overall, Khmer Rouge soldiers did not provide adequate food, water, medical treatment or accommodation for those forced to leave Phnom Penh.

10.2.13. ***Deaths***

497. In the face of severe and unrelenting conditions during the course of the evacuation, some evacuees either killed themselves or soon died from a combination of exhaustion, malnutrition or disease.[1487] Numerous witnesses recounted seeing

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[1484] T. 30 July 2012 (ROCHOEM Ton), pp. 83-84 (during the meeting, minor details were not elaborated); T. 26 July 2012 (ROCHOEM Ton), pp. 13-14 (he was able to listen to the meeting because he was a guard during this meeting). *See also*, Section 3: Historical Background, paras 144-147.

[1485] T. 24 April 2013 (CHUON Thi), pp. 48 (his unit did not receive any instructions from his battalion commander to help the people who were leaving the city), 73 (he was told that the authorities at the base were responsible for receiving those people); T. 28 May 2012 (NY Kan), pp. 76-77, 79 (a former Khmer Rouge soldier involved in the evacuation observed that the elderly, the sick and the pregnant had to "move about by themselves" and walk; stated it was advised and people in the bases were told that all people had to be received and food had to be offered and shared with the newcomers; specific details such as food, drink and shelter were not really part of the arrangement); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384417 (a former Khmer Rouge soldier, stated they did not provide any assistance to the civilians).

[1486] T. 5 November 2012 (SUM Chea), pp. 29, 49, 56 (people were not given assistance; there was no instruction to assist people).

[1487] T. 7 February 2013 (PIN Yathay), p. 25 (saw two women had hung themselves in two separate locations, and saw people too exhausted to move stop along the side of the road); T. 7 June 2013 (Sydney SCHANBERG), p. 4 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 72, ERN (En) 00898280, noted that foreigners who trickled into the embassy in subsequent days carried stories of bodies on the road and people who died of illness or exhaustion on the march); U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, para. 3, ERN (En) 00495557-58 (reporting that an evacuee stated insufficient or bad water and sunstroke killed the old and the very young, and cholera broke out; by the time they reached Kampong Cham, 4 to 5 people died of cholera daily); U.S. Embassy in Bangkok Telegram, Subject: The New Cambodia, E3/3006, 29 May 1975, para. 6, ERN (En) 00495565-66 (Indians and Filipinos mistakenly forced out of Phnom Penh say that many old, very young, ill and infirm died during the short time they marched

people dying in the streets and along the roadside.[1488] Civil Party PIN Yathay described how the further they travelled from the capital, the more exhaustion claimed the sick, the injured, the lame and the old, and increasingly they began to see bodies left beside the highway, until they were no longer shocked by the sight.[1489] PECH Srey Phal stated that by the time they reached Stung Meanchey, they saw dead people on hospital beds abandoned by the roadside on the outskirts of Phnom Penh.[1490]

498. Children in particular succumbed to hunger and the various illnesses they contracted throughout the journey.[1491] A Cambodian physician, Dr. Hay, stated that

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north as cholera broke out, food was short and clean water unavailable); PHAT Han Civil Party Application, E3/4756, 25 May 2009, p. 4, ERN (En) 00864559 (some elderly who could no longer walk died along the roads); CHIM Morn DC-Cam Supplementary Information, E3/4910, 23 March 2010, p. 3, ERN (En) 00861850 (along the way, saw that some elderly people and children had died); Refugee Accounts, E3/4590, 19 May 1976, p. 183, ERN (En) 00820501 (NI Bunly stated that as they forced people to trek day and night many people died in the course of the journey: patients who were driven from the hospital died because they could not walk; women who had just had their babies died due to lack of medicines; the war-wounded were killed by the Khmer Rouge); LY Ream Civil Party Application, E3/4980, undated, p. 3, ERN (En) 00893408 (stating only about 200 of them reached the village as some died due to starvation and disease); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 3, ERN (En) 00871750 (some pregnant women who delivered their babies on the way and were forced to continue travelling could no longer bear the hardship; others had to leave their babies behind); SOTH Navy Civil Party Application, E3/4921, 23 June 2009, p. 5, ERN (En) 00858006 (while on the road, she saw people taking their own lives, others dying of hunger; her infant sister and brother died of hunger); LOAS Vannan Victim Complaint, E3/5327, 25 October 2007, p. 6, ERN (En) 00875606 (evacuees died along the way and their bodies decomposed, while others became sick because of insufficient food and a long, exhausting journey); PREAB Ken Victim Complaint, E3/5406, 22 October 2008, p. 6, ERN (En) 00749400 (saw many die along the way due to starvation and old age); KEM Kuon Victim Complaint, E3/5418, 21 October 2008, p. 6, ERN (Kh) 00480987, (Fr) 00900984 (her father died two to three days after his arrival in his native district because of the long walk without food); TOCH Monin Civil Party Application, E3/4668, 20 January 2008, p. 3, ERN (En) 00238410 (the elderly could not keep up the pace and consequently perished during the march); IM Sunty Interview Record, E3/5555, 14 August 2009, p. 3, ERN (En) 00364783-84 (her mother-in-law died during the evacuation because of her advanced age).

[1488] T. 19 October 2012 (YIM Sovann), pp. 83-84 (people died along the street, people also died in a kind of stampede to leave the city); T. 5 November 2012 (SUM Chea), pp. 14-15 (saw people dying along the streets); T. 29 May 2013 (CHAN Socheat), pp. 42-43 (some people died along the road); T. 29 May 2013 (CHHENG Eng Ly), p. 92 (saw a lot of people who died along the road during the evacuation); T. 30 May 2013 (NOU Hoan), p. 6 (some people died and were left along the street); Refugee Accounts, E3/4590, p. 34, ERN (En) 00820352 (M, the interviewee, reported seeing thousands of unburied corpses rotting by the roadside, the deaths were due to lack of food, disease and lack of medicines); SAIDNATTAR Roshane Civil Party Application, E3/5076, 11 December 2009, p. 6, ERN (En) 00857597 (along the way, he saw babies on the ground crying next to their dead mothers).

[1489] T. 7 February 2013 (PIN Yathay), p. 51 (citing Book by P. Yathay: *Stay Alive, My Son*, E3/3988, ERN (En) 00587568).

[1490] T. 5 December 2012 (PECH Srey Phal), pp. 19-20 (she believed the people could have been seriously sick and, because of such situation, were unable to make it so their dead bodies were left unattended).

[1491] *See e.g.* Refugee Accounts, E3/4590, pp. 51, ERN (En) 00820369 (S recounted that at Banteay, a 7 year old child who had been walking with his parents during the hottest hours of the day died a few hours after drinking water from the lake), 198-199, ERN (En) 00820516 (on 27 May 1976 POK Sareth recounted the death of their 1 month-old baby who was sick and only skin and bones; at Prek Po, in

on the march from Phnom Penh they must have passed the body of a child every 200 metres. Most had died from gastrointestinal afflictions which caused complete dehydration; the children needed rest and medication yet neither was available.[1492] PECH Srey Phal, having no breast milk, milk or medicine for her baby, could only feed her baby water; her baby soon died and she was instructed to bury her in the forest.[1493] Others, such as BAY Sophany's youngest daughter who suffered from dysentery and vomiting, died from inadequate medical care; BAY described how her daughter immediately had a seizure and died after the medic they visited injected something into her daughter's head. BAY also buried her in a forest nearby.[1494]

10.2.14. ***Dead Bodies***

499. While some people claimed they did not see any dead bodies along the way,[1495] there was significant evidence of wounded people or dead bodies lying along the roads leading out of Phnom Penh.[1496] There were so many corpses that, according to

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Srey Santhor District, Kampong Cham Province, the Khmer Rouge searched them and took the medicine he was keeping for their sick child. Two days thereafter, their child died due to lack of medicine…Fifteen days thereafter, their fourth child, aged 4, fell sick and died, due to lack of medicine), 251, ERN (En) 00820569 (on 29 July 1976 Lieut. NON Thol stated that of seven children with whom he left Phnom Penh, three had died from disease and hunger within three months); SOTH Navy Civil Party Application, E3/4921, 23 June 2009, p. 5, ERN (En) 00858006 (her infant sister and brother died of hunger); KEM Kuon Victim Complaint, E3/5418, 21 October 2008, p. 6, ERN (En) 00890622 (her third son died of starvation along the way).

[1492] UK Government Report: *Human Rights Violations in Democratic Kampuchea*, E3/3319, 14 July 1978, para. 6, ERN (En) 00420601; *Analysis Prepared on Behalf of the Sub-Commission by Its Chairman of Materials Submitted to It and the Commission on Human Rights under decision 9 (XXXIV)* (ECOSOC), E3/2060, 30 January 1979, p. 11, ERN (En) 00078653.

[1493] T. 5 December 2012 (PECH Srey Phal), p. 25.

[1494] T. 4 June 2013 (BAY Sophany), pp. 11-12.

[1495] T. 23 November 2012 (OR Ry), p. 15 (she did not see any people die during the evacuation); T. 9 April 2013 (François PONCHAUD), pp. 32-34 (did not see dead bodies on the way to Preak Pnov 5 or 6 days following 17 April), 37; T. 24 April 2013 (CHUON Thi), p. 86 (a Khmer Rouge soldier, stated he never saw corpses or injured people).

[1496] T. 22 November 2012 (MEAS Saran), pp. 5, 34-35 (saw dead bodies at the Monivong bridge); T. 5 December 2012 (KIM Vanndy), pp. 87-88 (saw wounded people), 101-102 (saw the bodies of three dead LON Nol soldiers along the road); T. 25 October 2012 (KUNG Kim), p. 11 (saw dead bodies during the periods of heavy fighting); T. 23 November 2012 (CHAU Ny), p. 47 (observed sick and dead people on the side of the road on National Road No. 2); T. 5 December 2012 (PECH Srey Phal), pp. 19-20 (by the night of 17 April 1975, she and her family saw dead people on the path to Stung Meanchey); T. 22 October 2012 (CHUM Sokha), pp. 37, 40-41, 91-92 (saw dead bodies along the roadside as he and his family left the city via National Road No. 4 at around 6:30 or 7 p.m. on the evening of 17 April, and he saw smoke and burned bodies near the Pochentong Airport and the transport department; he also saw dead bodies along National Road No. 3, near Kampong Tuol); T. 27 May 2013 (AUN Phally), p. 49 (saw corpses along the road); T. 29 May 2013 (CHHENG Eng Ly), pp. 92, 107 (as she walked along National Road No. 1 and the river, she saw floating corpses, although she did not know whether they were the corpses of civilians or soldiers); T. 30 May 2013 (PO Dina), p. 98

Witness KUNG Kim, a former Khmer Rouge soldier, they were ordered to clear corpses from the road, and were to use tractors to push the corpses into the river.[1497]

500. Victims were identified as either Khmer Republic soldiers[1498] or as civilians, young and old alike.[1499] The exact circumstances of the death of those whose corpses

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(saw dead bodies along the street); T. 23 October 2012 (LAY Bony), pp. 92-93; T. 24 October 2012 (LAY Bony), p. 28 (saw dead bodies of civilians and children at Preaek Pra Commune; saw one or two bodies on the way from Phnom Penh); T. 6 November 2012 (MOM Sam Oeurn), pp. 25-26 (saw about 20 corpses along the road on the way to Preaek Samraong location); T. 23 November 2012 (CHAU Ny), pp. 47-48 (en route from Phnom Penh on National Road No. 2 observed dead people on the side of the road); T. 4 December 2012 (TOENG Sokha), pp. 42 (saw dead bodies on the east side of Monivong bridge along the riverbank on the second day after evacuation), 44 (saw a decapitated soldier along the road); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, ERN (En) 00517765; U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, 00495557, para. 3; *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 13, ERN (En) 00087549 (KONG Samrach saw rotting bodies by the roadside and on the banks of the Mekong and 4 bodies at Veal Sbau pagoda); SEN Sophon Civil Party Application, E3/4821, undated, p. 1, ERN (En) 00916889 (on both sides of the streets lay dead bodies, particularly in the Russian Hospital area); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 4, ERN (En) 00399169 (saw many black shrivelled corpses along the east bank at Neak Loeung and hundreds of corpses lined the road at Kampong Soeng); SENG Sokhom Civil Party Application, E3/4702, 20 May 2008, p. 7, ERN (En) 00417836 (there were a lot of human bodies on the way, but she could not tell if they were civilians or soldiers); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, pp. 3, ERN (En) 00156847 (on the way out of Phnom Penh along Monivong road, saw many corpses of soldiers killed in the war and civilians killed by Khmer Rouge for refusing to leave their houses at their orders), 4, ERN (En) 00156848 (while at Wat Champa saw the corpses of blindfolded men floating in the water); PHUY Pok Victim Complaint, E3/5167, undated, p. 6, ERN (En) 00219002 (a former Khmer Rouge soldier, he saw many people dead along the roads, particularly elderly people and children); CHAN Man Interview Record, E3/5278, 4 March 2009, p. 3, ERN (En) 00292821 (a former Khmer Rouge soldier, saw so many corpses along the road, in particular, at the Chaom Chau roundabout near Pochentong); UT Seng Interview Record, E3/5267, 14 January 2009, p. 4, ERN (En) 00282353 (along the way he saw the bodies of people who had died, they were shriveled and flattened by people who had walked on top of them, some had been eaten at by dogs).

[1497] T. 24 October 2012 (KUNG Kim), p. 104.

[1498] T. 26 July 2012 (ROCHOEM Ton), pp. 58-61 (on 19 April travelled into Phnom Penh with Son Sen and saw a lot of dead bodies along National Road No. 4 and Pochentong Airport that appeared to be soldiers based on the helmets that they were wearing, including some that were already decomposed); T. 19 October 2012 (YIM Sovann), pp. 82-83 (saw corpses of LON Nol soldiers along the road to Pochentong Airport when she left Phsar Depou Market); T. 24 October 2012 (KUNG Kim), pp. 82-83, 102; T. 4 December 2012 (TOENG Sokha), p. 44 (saw the decapitated body of a LON Nol soldier); T. 5 December 2012 (KIM Vanndy), pp. 101-102 (saw the dead bodies of three LON Nol soldiers along the road); T. 12 December 2012 (Denise AFFONÇO), pp. 73-74, 104 (saw many rotting corpses of LON Nol soldiers at Chamkar Mon); T. 29 May 2013 (HUO Chanthar), p. 72 (the corpses of LON Nol soldiers lined the road); T. 6 November 2012 (MOM Sam Oeurn), pp. 25-26 (corpses along the road to Preaek Samraong location included LON Nol soldiers); T. 27 May 2013 (YOS Phal), p. 76 (saw a pile of dead soldiers near Preak Knov market); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 12, ERN (En) 00087548 (KONG Samrach saw 5 bodies, killed by shells, wearing canvas and printed shirts), 21, ERN (En) 00087557 (the ground was covered with dead bodies of soldiers); CHEM Sem Interview Record, E3/5191, 3 July 2008, p. 2, ERN (En) 00274679 (saw the corpses of LON Sol soldiers in paratrooper uniforms along National Road No. 3).

[1499] T. 23 October 2012 (LAY Bony), pp. 92-93 (found fresh, dead bodies in the Cham Muslim community of Prek Pra, among them women and children; others told her that they too had seen dead

were visible along the roads, are unclear.[1500] It is likely that some of them, and in particular the soldiers, were killed during the attack preceding the capture of Phnom Penh. However given the evidence discussed in Section 10.2.13 ("Deaths"), the Chamber finds that the corpses which were seen at the time of the evacuation comprised both soldiers, including those who died during the fighting, and evacuees.

10.2.15. *Treatment of Officials and Soldiers of the Khmer Republic*

501. After the Khmer Rouge entered and conquered Phnom Penh, General MEY Sichan made a radio announcement calling on all Khmer Republic soldiers to lay down their weapons.[1501] The Khmer Rouge informed the people of Phnom Penh via

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bodies); T. 24 October 2012 (KUNG Kim), pp. 82-83, 102; T. 22 November 2012 (MEAS Saran), pp. 33-35 (saw two dead male bodies dressed in civilian clothing near Monivong Bridge); T. 12 December 2012 (Denise AFFONÇO), p. 104 (saw other people, such as civilians who had been eliminated, corpses were strewn along the road); T. 27 May 2013 (YOS Phal), p. 76 (saw the dead bodies of civilians near barbed wire along the road after he left Prey Pnov); T. 6 November 2012 (MOM Sam Oeurn), pp. 25-26 (corpses along the road to Preaek Samraong location included civilians); NEANG Muong Sokhon Civil Party Application, E3/4681, 30 May 2008, p. 6, ERN (En) 00850906 (there were lots of bodies by the wayside, especially children and old people, they were decomposing and there was a dreadful stench); SENG Chon Interview Record, E3/5562, 16 October 2009, p. 3, ERN (En) 00400454 (at Monivong Bridge to the east river bank he saw many dead bodies near Chantrea Cinema, all civilians).

Describing both soldiers and civilians: T. 27 May 2013 (SOU Sotheavy), pp. 12, 15 (saw many dead bodies when she reached Preaek Ph'ay, including the bodies of LON Nol soldiers, Buddhist monks, and civilians); T. 27 May 2013 (YOS Phal), p. 72 (during the journey he saw the corpses of police, soldiers, and civilians, some of whom were young people and the elderly); T. 4 June 2013 (BAY Sophany), p. 9 (saw dead bodies of LON Nol soldiers, the elderly, children, and pregnant women lying along the way); Refugee Accounts, E3/4590, p. 228, ERN (En) 00820546 (Seng Yungthearith noted that on 18 April 1975 he saw about 200 corpses strewn about on the pavement at the Pepsi Cola plant, mostly children, some had been shot while others were bound and beaten to death; on 19 April 1975, while walking along the road, they saw a large number of dead people, both civilians and soldiers and a lot of ammunition left behind).

[1500] *For example, see* T. 5 December 2012 (KIM Vanndy), pp. 101-102 (along the road saw the dead bodies of three LON Nol soldiers that could have been casualties of the fighting as the bodies were already swollen and there were flies); T. 27 May 2013 (AUN Phally), p. 49 (thought that the corpses seen along the road could have been the bodies of people who resisted the Khmer Rouge orders); T. 6 November 2012 (MOM Sam Oeurn), p. 26 (thought some bodies might have just died from exhaustion; en route from Phnom Penh on National Road No. 2 observed sick people who fell); T. 5 June 2013 (Sydney SCHANBERG), p. 11 (two weeks later when we were being taken out of Phnom Penh, there were bodies along the roads that they were forced to leave; he assumed that some of them were people who died on the way out of the city); T. 6 June 2013 (Sydney SCHANBERG), p. 69 (in the beginning they saw bodies of Cambodian soldiers and civilians by the side of the road; that must have happened on the last push); T. 12 December 2012 (Denise AFFONÇO), p. 104 (corpses were strewn along the road, however, she did not return to find out why or how they died); KEO Savoeun Victim Complaint, E3/5338, 14 March 2008, p. 6, ERN (En) 00874112 (attributed the deaths of the two dead LON Nol soldiers he saw to the attack on Phnom Penh); SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895 (on the way to the Kampong Cham Province, he saw dead bodies of soldiers due to the war); UY Soeung Civil Party Application, E3/5375, undated, p. 5, ERN (En) 00870329 (saw a lot of corpses on the way to Takeo but did not know how they died).

[1501] *See* Section 10: Movement of the Population (Phase One), para. 461.

loudspeaker that they could go about their business and that only the seven traitors, including LON Nol, SIRIK Matak and CHENG Heng, would be killed.[1502] At that time, several of the high-ranking officials who had previously been identified by radio, including LON Nol, had already fled the country.[1503] LONG Boret, SIRIK Matak and some other high-level officials still remained in Cambodia.[1504]

502. After the radio announcements many Khmer Republic soldiers waved white flags in surrender, laid down their arms, and shed their uniforms.[1505] Khmer Rouge units were instructed not to shoot people waving white flags.[1506]

[1502] T. 22 October 2012 (CHUM Sokha), pp. 34-35, 93-94. *See also*, Section 3: Historical Background, para. 120; T. 28 January 2013 (Al ROCKOFF), pp. 14-15 (had already heard about reports on the radio in February, March and early April 1975 that referred to the clique of traitors that overthrew Sihanouk and stated that he heard that the LON Nol traitors were to be put to death).

[1503] *See* Section 3: Historical Background, para. 164.

[1504] French Ministry of Foreign Affairs Telegram, Subject: Political Asylum, E3/2694, 18 April 1975 (the French Consul Dyrac lists among those present at the embassy are Prince SIRIK Matak and two of his officers, Princess MOM Manivong (Prince Sihanouk's third wife) and her daughter, son-in-law and grandchildren, UNG Boun Hor (President of the National Assembly) and LOEUNG Nal (Minister for Health)); French Ministry of Foreign Affairs Telegram, Subject: Departure of Refugees, E3/2700, 20 April 1975, ERN (En) 00504002 (Dyrac noted 155 FULRO members and Y Ben Syok, former governor of Ratanakiri Province, were also present at the embassy); T. 28 January 2013 (Al ROCKOFF), pp. 75-77 (FULRO means Federation for the Liberation of Oppressed Minorities, Montagnard ethnic minorities that fought on the American side during the Vietnam war and civil war in Cambodia).

[1505] T. 5 November 2012 (SUM Chea), pp. 9-10, 48-49, 58 (his division was greeted in Phnom Penh by civilians and LON Nol soldiers waving white flags and the sight of scattered, unattended weapons on the roadside; the LON Nol soldier were not armed when he entered Phnom Penh); T. 8 October 2012 (MEAS Voeun), p. 10 (a former Khmer Rouge commander, saw civilians waving white flags from their houses); T. 28 January 2013 (Al ROCKOFF), pp. 20, 29-30, 33-34, 106, 110 (spent an hour photographing the growing collection of weapons and the disarming of LON Nol soldiers at the intersection of Monivong and Sihanouk); T. 29 May 2013 (HUO Chanthar), pp. 70-71 (some of HUO Chanthar's family and neighbors raised a white flag); T. 5 December 2012 (KIM Vanndy), p. 93 (saw people waving white flags); T. 22 October 2012 (CHUM Sokha), pp. 34 (the LON Nol soldiers who fled took off some of their uniforms; some soldiers, including himself, held white flags along the road), 89-90 (as a member of the Air Force under LON Nol, he hid his uniform and firearms and dressed in civilian clothes during the invasion of Phnom Penh to avoid being identified as a LON Nol soldier; a Khmer Rouge soldier took one set of his uniform from him but did nothing to him), 91 (saw many LON Nol soldiers had surrendered their arms), 96-97 (there were likely many LON Nol soldiers among the evacuees in civilian clothes, but none in military clothes); T. 23 October 2012 (LAY Bony), p. 84 (her husband, a LON Nol soldier, took off his uniform before Khmer New Year); T. 5 December 2012 (PECH Srey Phal), pp. 17, 69 (the Khmer told them that if they were in possession of military uniforms or weapons they had to surrender them. She saw weapons being surrendered, and thrown on the roads and witnessed the Khmer ask men in military uniform to take off their uniforms and they continue on without clothes); T. 9 April 2013 (François PONCHAUD), p. 23 (we could see other people who had to surrender or were disarmed and young people searching others for weapons); LOENG Lenh Civil Party Application, E3/4956, 11 January 2010, p. 6, ERN (En) 00842189-90 (a former LON Nol soldier in Phnom Penh at the time the Khmer Rouge evacuated the city, shed his uniform for a student's uniform fearing he would be shot and was then evacuated alongside everyone else). *See also*, Book by R. NEVEU: *The Fall of Phnom Penh*, E3/3208, ERN (En) 00432453, 00432469, 00432480-82, 00432484-85 (photos depicting the collection of weapons).

503. Having occupied the Ministry of Information, an unidentified individual speaking on behalf of the Khmer Rouge demanded "ministers and all other generals who ha[d] not run away, to immediately turn themselves over at the Ministry of Information to restore order."[1507] In response to the radio announcement, many generals and officers of the Khmer Republic reported to the Ministry of Information, including Brigadier General LON Non (Marshall LON Nol's younger brother), Brigadier General CHHIM Chuon and Prime Minister LONG Boret and his wife.[1508] Khmer Rouge soldiers also sought out those senior Khmer Republic officials taking refuge at the French Embassy: Sydney SCHANBERG described how he personally witnessed Prince SIRIK Matak and UNG Boun Hor (National Assembly President), both of whom had taken refuge at the French Embassy, leave with Khmer Rouge

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[1506] T. 8 October 2012 (MEAS Voeun), p. 90 (citing Interview Record, E3/424, p. 3, ERN (En) 00421070); T. 5 November 2012 (SUM Chea), pp. 58-59 (we treated people waving white flags as already defeated and surrendered); *cf.* T. 24 October 2012 (KUNG Kim), p. 83 (former Khmer Rouge soldier asserting that there were fires everywhere so they could not be sure whether people had raised a white flag to surrender and retreat since there were others amongst them as well; they had to shoot those who were there).

[1507] *See* Section 10 : Movement of the Population (Phase One), para. 462. *CPNLAF Representative Tells Government Troops to Surrender* and *Government Armed Forces Surrender Reported* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166974-75; T. 9 April 2013 (François PONCHAUD), p. 49 (there was no negotiation, MEY Sichan would like the soldiers to surrender, the republican soldiers to disarm, and there was no negotiation at all; Samdech HUOT Tat advised everyone to unite to work together to rebuild the country); T. 5 June 2013 (Sydney SCHANBERG), pp. 43-44 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 66-67, ERN (En) 00898274-75, an insurgent broadcast stated: "We have defeated the clique of the traitor LON Nol. We therefore call on all commanders of the traitor units to lay down arms and surrender. Any soldier who refuses shall be severely punished." Another message, broadcast several times, invited all ministers and generals to meet immediately with the Khmer Rouge leaders at the Ministry of Information to help formulate measures to restore order).

[1508] T. 5 June 2013 (Sydney SCHANBERG), pp. 44 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 69-71, ERN (En) 00898277-78, noting he saw about 50 prisoners standing in front of the Ministry building, among them Brigadier General LON Non, Marshall LON Nol's younger brother, and Brigadier General CHHIM Chuon), 45-48 (LONG Boret also arrived later in the day; they were surrounded by about 10 to 15 heavily armed Khmer Rouge troops); T. 28 January 2013 (Al ROCKOFF), pp. 47-48, 52 (saw about two dozen functionaries from the LON Nol regime and some Khmer Rouge at the Ministry), 48, 56 (Prime Minister LONG Boret and his wife who were clearly under Khmer Rouge control also arrived and were taken away maybe 20 minutes later), 50-51 (aside from LONG Boret, he did not recognise any of the other LON Nol officials at the Ministry of Information as he had no person-to-person contact with them); T. 29 January 2013 (Al ROCKOFF), pp. 52-53 (there were a mix of military and civilians there, but as the two dozen or so functionaries were all in civilian clothes, it was hard to tell whether they had military or civil rank); White House Memorandum of Conversation, E3/3467, 18 April 1975, p. 2, ERN (En) 00443347 (noting LONG Boret, Matak and LON Nol [sic] have been captured. Despite the reference to LON Nol, the Chamber considers it was intended to refer to LON Non); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 3, ERN (En) 00003278-79 (at 4:00 pm describing 50 prisoners in front of the Ministry of Information including LON Non, several generals and HOU Hang Sin, director of LONG Boret's cabinet; and at 4:50 pm the arrival of LONG Boret); Refugee Accounts, E3/4590, p. 228, ERN (En) 00820546 (a law student stated that on 17 May [sic] 1975 at 10 a.m. he saw the Khmer Rouge take Colonel MAT Safran to Information).

soldiers after the latter came in search for them.[1509] All of those senior officials disappeared and media and diplomatic dispatches subsequently reported that certain officials, including Prime Minister LONG Boret, Brigadier General LON Non and Prince SIRIK Matak, were executed.[1510]

[1509] T. 5 June 2013 (Sydney SCHANBERG), pp. 52-53, 55, 58 (*citing* S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 85, ERN (En) 00898293, noting that on 20 April a squad of heavily armed Khmer Rouge soldiers came for the high officials who had been hiding out at the embassy; at 2.30 p.m., after some talk with Dyrac at the gate, about a dozen people who were sought came out, including some women and children, SIRIK Matak and UNG Boun Hor, the National Assembly President); French Ministry of Foreign Affairs Telegram, Subject: Departure of Refugees, E3/2700, 20 April 1975, ERN (En) 00504002 (Dyrac describes how the city committee had authorised the departure of those Cambodian nationals taking refuge in the embassy and they were directed to the northern part of the city, with the exception of figures from the former regime who would join another group); French Ministry of Foreign Affairs Telegram, Subject: Departure of Refugees, E3/2702, 20 April 1975, ERN (En) 00504003 (Dyrac reports that Prince SIRIK Matak and others named in his earlier telegram were taken from the embassy by members of an unidentified committee, either FUNK or NLA); *See also*, T. 28 January 2013 (Al ROCKOFF), pp. 71-72, 74-77, 102-103 (a group of at least 300 FULRO soldiers [Federation for the Liberation of Oppressed Minorities, Montagnard ethnic minorities that fought on the American side during the Vietnam and civil war in Cambodia] were forced out of the French Embassy at gun point; after they left and most of the people had passed out of sight he heard a fair amount of gunfire from the sports complex just north of the embassy; years later, he was told that there were reports that people were shot in the sports complex); *cf.* Refugee Accounts, E3/4590, p. 50, ERN (En) 00820368 (S, the interviewee, stated that he and the Khmers who had been expelled from the French Embassy were taken to Lambert Stadium; at the stadium, he said they were divided into three groups - senior officials, soldiers (including Dibellon, Dibalene, Plek Phuon, Cadet, Paul Y Bun Suor and approximately 100 FULRO members) were taken away by lorry, while the others settled themselves in shacks, on the floor, side by side, during the night).

[1510] *Relation Confirmed as Khmers Leave, and Executions Confirmed* (Bangkok Post), E3/604, 2 November 1975, ERN (En) 00419043 (reporting IENG Sary's confirmation that LONG Boret and LON Non had been executed); T. 5 June 2013 (Sydney SCHANBERG), p. 48 (this was the last time he spoke to LONG Boret; they later announced that they had executed him); T. 6 June 2013 (Sydney SCHANBERG), p. 14 (heard from French Embassy officials that LONG Boret and SIRIK Matak were executed); T. 7 June 2013 (Sydney SCHANBERG), pp. 5-6 (saw statements by Khmer Rouge leaders acknowledging they had killed LONG Boret, SIRIK Matak and others); T. 28 January 2013 (Al ROCKOFF), pp. 57-58 (heard afterwards that the LON Nol officials were marched to the Cercle Sportif (near the American Embassy) where they were bludgeoned to death; he never saw LONG Boret or Lon Non again). *See also*, T. 29 May 2013 (THOUCH Phandarasar), pp. 30-31, 37 (found out from her cousin, YOURN, that when the Khmer Rouge entered Phnom Penh, General THACH was called to the Ministry of Information; YOURN witnessed the General's execution); U.S. Embassy Telegram, Subject: IENG Sary Visit to Thailand, E3/3358, 7 November 1975, para. 5, ERN (En) 00413857 (noting that the Cambodian Justice Minister had on another occasion told the Thai that he had heard that of the seven traitors who were marked for execution, those who were in the country, including LONG Boret and SIRIK Matak, had been killed); UNG Bonavan Civil Party Application, E3/4679, ERN (En) 00850654 (son of UNG Boun Hor who was then President of the Khmer Republic National Assembly, noting he had no news of his father since 21 April 1975 the day when French Embassy officials handed him over to the Khmer Rouge); Documentary by THET S. and R. LEMKIN: Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/40001R, 2007 (Additional Footage: *One day at Po Chrey*), at 22.07 - 22.11 (NUON Chea confirmed that the CPK's "political orders" that the super-traitors "were to be liquidated", were in fact carried out); *See also*, Joint Criminal Enterprise, paras 824-826 and fn 2602.

504. Elsewhere throughout Phnom Penh, Khmer Rouge soldiers actively sought out remaining members of the fallen Khmer Republic and their 'accomplices'.[1511] Khmer Rouge soldiers thus searched for Khmer Republic soldiers and officials at various locations, including hospitals, Hotel Le Phnom and, in the ensuing days, at the French Embassy.[1512] SUM Chea, a Khmer Rouge soldier, testified that checkpoints were also

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[1511] T. 5 November 2012 (SUM Chea), pp. 26 (*citing* SUM Chea Interview Record, E3/3961, ERN (En) 00223346, Battalion Commander Hak told them they needed to evacuate the city's population in order to sweep out LON Nol soldiers), 47 (a former Khmer Rouge soldier, stated there was no doubt that LON Nol soldiers and their accomplices were regarded as the enemies); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 4, ERN (En) 00377359 (the Khmer Rouge told them the city needed to be cleaned, they wanted to mop up the LON Nol soldiers); KHAT Khe DC-Cam Statement, E3/5598, 15 January 2005, pp. 19-22, ERN (En) 00874734-37 (a former member of the artillery special forces of the North Zone unit, stated troops were told the evacuation was to "sweep away the enemy," by which was meant LON Nol soldiers hiding in various nooks and crannies); IENG Phan Interview Record, E3/419, 23 November 2009, p. 3, ERN (En) 00411004 (a former Khmer Rouge soldier, stated that he attended meetings with SAM Bit when he said that they were to evacuate the population from the city with the goal of assessing who were LON Nol soldiers); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 3, ERN (En) 00223335 (a former Khmer Rouge soldier, stated that before entering Phnom Penh they were told they had to attack the American imperialists and the LON Nol puppets); *See also*, T. 19 October 2012 (YIM Sovann), p. 91 (a civil party who was evacuated, stated they were accused of being either enemies or LON Nol soldiers and told they had to leave); PAL Rattanak Supplementary Information, E3/4840, 24 June 2010, p. 1, ERN (En) 00864848 (he was pushed and beaten by Khmer Rouge soldiers who alleged he was a soldier).
As to their accomplices, see T. 9 April 2013 (François PONCHAUD), p. 25; T. 10 April 2013 (François PONCHAUD), pp. 50, 103-104 (reported that Khmer Rouge soldiers with whom he drove around Phnom Penh on 18 April 1975 were not frightened of the LON Nol soldiers and instead inquired where the American soldiers were); MAO Kim Sophie Civil Party Application, E3/5077, 26 November 2009, p. 5, ERN (En) 00858023 (they said the city was going to be cleansed of pro-American enemies who were hiding there); Jon SWAIN Article (London Times), E3/51, 11 May 1975, p. 3, ERN (En) 00003278 (SWAIN reports that the Khmer Rouge told Dith Pran that they were only after the rich and the bourgeoisie); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 3, ERN (En) 00877009 (in a village where the family stopped during the evacuation, the Khmer Rouge frequently announced by loudspeakers (at least twice a day) that the evacuees could not return to Phnom Penh yet because there were still traitors and Americans hiding there).

[1512] MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, pp. 3-4, ERN (En) 00944522-23 (with his father, a doctor, working at Preah Angk Duong hospital at the time, Khmer Rouge forces were breaking the windows of locked rooms to search for LON Nol soldiers; his father unlocked the rooms to prove there were no LON Nol soldiers); Telegram to Ministry of Foreign Affairs, Subject: Situation in Phnom Penh - 14 h, E3/2693, 18 April 1975, para. 5, ERN (En) 00486888 (the Khmer Rouge also enquired whether LON Nol soldiers were among the wounded at Calmette Hospital); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 21, ERN (En) 00087557 (PAM Moeun stated that in the vicinity of the radio station Stung Meanchey, the Khmer Rouge searched for generals, officers, sub-officers and soldiers as well as male and female employees); T. 6 June 2013 (Sydney SCHANBERG), pp. 15 (*citing* S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 67, ERN (En) 00898275, around 3:00 p.m. on 17 April while he was arrested, Khmer Rouge troops brandishing rockets and other weapons forced their way into the neutral zone, the Hotel Le Phnom; their main mission was to search for government military officers), 15-16 (he knew this from others who had been at Hotel Le Phnom); T. 5 June 2013 (Sydney SCHANBERG), pp. 52-53, 58 (*citing* S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 82, ERN (En) 00898290, noting that on 18 April at about 4:30 p.m. a loudspeaker truck passes the French Embassy two or three times blaring the message 'there are still traitors and super traitors in the city, we must look for them'; 85, ERN (En) 00898293, noting

established in and around the city, for instance at Chrouy Changvar Bridge and Phsar Thmei (central market), to check for former Khmer Republic soldiers, among others.[1513]

505. Various Khmer Rouge units received orders that Khmer Republic soldiers who surrendered their arms could be either evacuated with the population or re-educated, while those who did not surrender could be shot.[1514]

506. Civilian officials of the Khmer Republic, soldiers who had surrendered without being arrested or being sent back to 'work' in Phnom Penh and were no longer in uniform, as well as their respective families, were in fact evacuated alongside the

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that on 20 April a squad of heavily armed Khmer Rouge soldiers came for the high officials who had been hiding out at the embassy).

[1513] T. 5 November 2012 (SUM Chea), p. 50 (and to ensure that people could not re-enter the city). *See also,* U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, para. 11, ERN (En) 00495561 (Sin Mao noted that traveling soldiers received much closer scrutiny at checkpoints than did civilians).

[1514] T. 24 October 2012 (KUNG Kim), pp. 108-109 (a Khmer Rouge soldier, stated LON Nol soldiers who did not resist were spared and could be evacuated; those who resisted would be shot); T. 25 October 2012 (KUNG Kim), pp. 50-51 (same); THA Sot Interview Record, E3/464, 19 January 2008, p. 3, ERN (En) 00226108 (a former Khmer Rouge soldier, stated his chief, Koy Thuon told him to shoot to death those who would not give up); KHOEM Samnang DC-Cam Interview, E3/5660, undated, p. 1, ERN (En) 00183453 (Samnang stated his orders were to continue fighting FANK until they surrendered, and those who surrendered were to be kept alive, not executed, but refashioned); KHAT Khe DC-Cam Statement, E3/5598, 15 January 2005, p. 1, ERN (En) 00526857 (a former member of the artillery special forces of the North Zone, stated if the LON Nol soldiers shed their uniforms, laid down their weapons and turned themselves in, they were let go); KHORN Brak Interview Record, E3/509, 8 January 2009, pp. 2-3, ERN (En) 00282215-16 (a former Khmer Rouge soldier, attended a meeting three days prior to the attack on Phnom Penh where Ta Yim told all the troops how, after they attacked and entered Phnom Penh, they were to tell the LON Nol soldiers, regardless of their rank, to lay down their weapons, and the Khmer Rouge would let them go back to their former positions in three days; he personally entered the base of a captain at Pochentong and told the captain to lay down his arms and have his subordinates gather their weapons at one location, dress as ordinary citizens and walk away); LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier, stated she received orders from her superior, Sary, that if they found LON Nol soldiers, they could kill them right away; those who surrendered were made prisoners and transported away with trucks but she do not know where they were taken); TEUNG Leap DC-Cam Interview, E3/5683, 13 February 2003, p. 38, ERN (En) 00878475 (a former Khmer Rouge soldier, stated Division 1 went around Tuol Kork disarming the LON Nol soldiers, after which they were to be sent to the countryside along with people in the northern part of Phnom Penh, who were evacuated up Route 5), 96, ERN (En) 00878533 (LON Nol soldiers left the city like ordinary citizens); SEM Hoeun Interview Record, E3/5152, 7 March 2008, p. 3, ERN (En) 00205081 (a former Khmer Rouge soldier of the 310th Division, told the LON Nol soldiers to take off their clothes and evacuate alongside others who were leaving); LAY Ien Interview Record, E3/470, 4 March 2008, p. 3, ERN (En) 00205008 (a Khmer Rouge soldier, stated Khmer Rouge soldiers had LON Nol soldiers take off their clothing, and throw down their weapons after which they could go wherever they wanted); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 3, ERN (En) 00223335 (a former Khmer Rouge soldier, stated that he had LON Nol soldiers, both in uniform and civilian clothing, leave the city the same as the civilians).

civilian population.[1515] While many Khmer Republic soldiers and civilian officials were sent to villages for work or re-education,[1516] some evidence put before the

[1515] T. 27 May 2013 (YOS Phal), pp. 71, 102-103 (a policemen under the LON Nol regime, was told by a Khmer Rouge soldier to remove his police boots and beret as a sign that the Khmer Rouge had defeated the LON Nol soldiers; still wearing his uniform, he continued onwards, was searched by Khmer Rouge soldiers at Chroy Changvar Bridge for weapons, and was allowed to continue on); Civil Party SOT Sem Interview Record, E3/4654, 15 October 2009, pp. 3-4, ERN (En) 00400463-64 (a former LON Nol soldier, stated those who had army uniforms and weapons had to leave these materials in the street before leaving the city); LY Pros Civil Party Application, E3/5412, undated, p. 6, ERN (En) 00872963 (a LON Nol soldier at the military barracks near Wat Phnom when the Khmer Rouge entered, stated he and his fellow soldiers laid down their weapons and surrendered, after which the Khmer Rouge soldiers told them to leave the city. Another group of Khmer Rouge soldiers transported the applicant and his colleagues to S'ang. After an attempt to flee to return to Phnom Penh, they were arrested and forced to walk to Roka Kaong where they stayed for a month).

[1516] U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, para. 4, ERN (En) 00495558 (Sin Mao noted that about 12 kilometers east of the Prek Kdam ferry, the Khmer Rouge began to divide the evacuees up: soldiers, police, and internal security agents were placed into one category which Sin Mao understood would be taken to dig irrigation ditches and build dams; high-ranking civil servants formed another category assigned lighter tasks. The Khmer Rouge separated both categories from their families. An air-force lieutenant colonel, a skilled mechanic, was sent for reeducation course; some naval troops, whom the Khmer Rouge particularly hated, worked carrying dirt near Srei Veal, just west of Kampong Cham city; later at Siem Reap, Sin Mao learned that FANK officers chopped wood in the Kulen Mountains while FANK enlisted troops prepared the fields near the foothills; their families moved to Roluos. On route 6 at Kralanh, Sin Mao understood that the Khmer Rouge separated 80 soldiers, possibly officers, from their families and sent them away for "reeducation", which villagers said consisted of work and study; if a man does not return from a reeducation session within six months, the Khmer Rouge had probably killed him); PRUM Sokha Victim Complaint, E3/5392, undated, p. 6, ERN (En) 00873794 (the daughter of the Chief of Military Finance at the Defence Ministry under LON Nol, stated that the Khmer Rouge gathered the high-ranking LON Nol military officers at a guard garrison at the Royal Palace and segregated the officers from the soldiers, although the officers' family members were driven the following week to Prasat Tuyau Village, Leuk Daek District, Kandal Province where they farmed for two months, and later they were taken by truck to Romeas Haek District, Svay Rieng Province, her parents' hometown, where she was ordered to join a children's unit);. *See also*, Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, pp. 28, ERN (En) 00170719 (the former courier for CHEY Suon, stated that in tambon 25 they were told that among the evacuees from Phnom Penh were former LON NOL soldiers, of whom only the soldiers that were responsible for lots of killing and the officers were to be considered enemies; other than Ministers, civil servants were not supposed to be considered enemies), 65, ERN (En) 00170756 (a LON Nol soldier captured in 1970 and held at Amleang where LON NOL soldiers captured since 1970 were held, stated that of a new batch of 3,000 arrivals in 1975, mostly soldiers and civil servants, the officers were executed almost immediately while the others were put to work at Ta Rang, clearing the forest, planting cotton or growing rice). *See also*, T. 20 May 2013 (IENG Phan), pp. 36-38, 66-67, 69 (a former Khmer Rouge soldier, in attacking Phnom Penh they received instructions that captured LON Nol soldiers were to be sent to the back and not tortured; accordingly when he encountered LON Nol soldiers he disarmed them and sent them to the rear; he never received any orders to mistreat or execute LON Nol soldiers).

Additional accounts of former LON Nol soldiers who were evacuated from Phnom Penh to the country show that the soldiers had either concealed their identity during the evacuation, or fail to clarify whether they were identifiable as a LON Nol soldier or official at the time of leaving Phnom Penh: T. 22 October 2012 (CHUM Sokha), pp. 37, 90 (he hid his uniform and his friend's firearms prior to the invasion and dressed in civilian clothes to avoid being identified as a LON Nol soldier; he evacuated alongside others); BOTH Soth Civil Party Application, E3/4823, 4 December 2008, p. 4, ERN (En) 00840000 (married to a LON Nol sailor, stated Khmer Rouge soldiers entered the barracks near Chroy Changvar and arrested government soldiers; her husband managed to return home and was evacuated with her and their two daughters by boat toward the east of the river bank along National Road No. 6);

Chamber appears to show that many were subsequently killed at their destinations.[1517] Conscious that executions carried out at worksites and cooperatives do not fall within the scope of Case 002/01, the Chamber will not have regard to these deaths in reaching its findings on the specific criminal charges in relation to movement of the population (phase one). The Chamber nevertheless includes this evidence here in order to present a full account of events at the time.

507. However, numerous other soldiers and civilian officials of the Khmer Republic, the former including those who had surrendered, were injured or had been detained and were thus *hors de combat*, were also executed on the spot in Phnom Penh.[1518]

YANG Sokhan Civil Party Application, E3/5096, 7 November 2009, p. 5, ERN (En) 00569891 (a former LON Nol soldier based at the border between Kandal and Kampong Speu, returned to Phnom Penh when they lost the war, and was evacuated with everyone else; he and his family returned to their home village where they were put to work); SOK Soth Civil Party Application, E3/5075, undated, pp. 1-2, ERN (En) 00893507-08 (a former LON Nol soldier in Phnom Penh at the time the Khmer Rouge evacuated the city, went to the countryside with others and put to work).

[1517] MEY Nary Victim Complaint, E3/5397, 30 May 2008, p. 6, ERN (En) 00834021 (her brother, a policeman of the LON Nol regime, and his family were evacuated to Charnkar Andoung Commune, Charnkar Leu District, Kampong Cham Province, where they were killed by Khmer Rouge who accused them of being LON Nol officials); KEV Mey Victim Complaint, E3/5403, 22 October 2008, p. 6, ERN (En) 00872951 (two weeks after her family arrived in Russei Dom Village, Praphnum Commune, Angkor Chey District, Kampot Province from Phnom Penh, her husband, a former LON Nol soldier and considered a 'new person', was arrested and taken to the Ta Man Security Office by the Khmer Rouge; she has not heard from him since); LEV Lam Interview Record, E3/4630, 1 July 2008, p. 5, ERN (En) 00274646 (a former Khmer Rouge soldier, stated that when the 17 April people arrived from Phnom Penh in District 12, on the basis of their biographies, they were divided into ordinary people (e.g. farmers) and non-ordinary people (e.g., soldiers, civil servants and capitalists), and the latter were killed); PAK Son Victim Complaint, E3/5432, 12 May 2009, p. 6, ERN (En) 00872991 (after they arrived in Ta Am Village, the POL Pot clique investigated and found out her father had been a soldier, so they took him to be killed immediately that morning); RIEL San Interview Record, E3/5511, 29 October 2009, p. 4, ERN (En) 00412172 (his brother-in-law, a former policeman evacuated from Phnom Penh to Takeo Province and living with him, was arrested the day after he arrived in the village); EK Orn Civil Party Application, E3/5413, 27 October 2008, p. 6, ERN (En) 00869935 (her brother, a military medic of the rank of captain under LON Nol, had been evacuated from Phnom Penh to their hometown, but she heard that he was executed in 1977); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 65, ERN (En) 00170756 (a LON Nol soldier captured in 1970 and sent to Amleang where he claimed LON NOL soldiers captured between 1970-1972 were held, stated that of a new batch of 3,000 arrivals in 1975, mostly soldiers and civil servants, the officers were executed almost immediately).

[1518] Refugee Accounts, E3/4590, p. 133, ERN (En) 00820451 (a law student stated the Khmer Rouge killed the soldiers at Preak ket Mealea hospital); KHAT Khe DC-Cam Statement, E3/5598, 15 January 2005, p. 1, ERN (En) 00526857 (a former member of the artillery special forces of the North Zone, stated that most LON Nol soldiers found two or three days after 17 April were executed, although some were re-educated); KHEN Sok Interview Record, E3/5556, 1 September 2009, p. 3, ERN (En) 00377358 (saw a Khmer Rouge soldier shoot dead an unarmed LON Nol soldier in uniform); EAM Tres Civil Party Application, E3/4822, undated, p. 5, ERN (En) 00893354 (a LON Nol soldier who

508. Other Khmer Republic soldiers were arrested[1519] or separated from the civilian population,[1520] although their precise fate is unclear because if they were not

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surrendered and was arrested by a Khmer Rouge soldier near his barracks, had his hands tied behind his back and was tied to 12 other people and escorted to the river bank; at the river bank, he saw the Khmer Rouge shoot dead one LON Nol soldier; after an unknown Khmer Rouge Commander signaled orders with his red flag, the Khmer Rouge shot dead five more LON Nol soldiers. At that time his life was spared, but he was sent with 500 other people to a prison for re-education); BOTH Soth Civil Party Application, E3/4823, 4 December 2008, p. 4, ERN (En) 00840000 (married to a disabled LON Nol sailor, she saw one government soldier, who was tied up, shot to death by the Khmer Rouge); PAL Rattanak Civil Party Application, E3/4839, undated, p. 3, ERN (En) 00893371 (during the evacuation, he saw hundreds of LON Nol soldiers tied by their hands with cotton rope walking in rows and boarding trucks, while Khmer Rouge threatened that he who broke the cotton rope would be killed instantly; a few soldiers who sought to run through the crowds were shot without hesitation, some evacuees also died during the shooting); PRUM Sokha Victim Complaint, E3/5392, undated, pp. 6, ERN (En) 00873794 (the daughter of the Chief of Military Finance at the Defence Ministry under LON Nol, stated that after the Khmer Rouge entered the city, they gathered the high-ranking LON Nol military officers at a guard garrison at the Royal Palace and then segregated the officers from the soldiers), 7, ERN (En) 00873795 (on 20 January 1978, the Khmer Rouge detained her father and many former military commanders at the garrison at the Royal Palace where they tied them up, took them out and brutally killed them); MEY Nary Victim Complaint, E3/5397, 30 May 2008, p. 6, ERN (En) 00834021 (LON Nol soldier's great uncle, cousin and nephews/nieces were killed by the Khmer Rouge behind the Reussei Keo Military School, near the train station in Phnom Penh while they were being driven out of Phnom Penh); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 21, ERN (En) 00087557 (PAM Moeun stated that generals, officers, sub-officers, soldiers and employees who were found by the Khmer Rouge were assembled and taken that night to Kompong Kantuot where they were executed; was present at the execution of soldiers in uniform on Boulevard Mao-Tse-Tung); Report by H. LOCARD: *Bophea Region*, E3/3209, undated, p. 13, ERN (En) 00403143 (Mrs. Chhieuv Si Lang's husband had been killed during the evacuation because he was a LON Nol soldier), 27, ERN (En) 00403157 (Ket Chhean witnessed the shooting of a colonel); UT Seng Interview Record, E3/5267, 14 January 2009, p. 3, ERN (En) 00282352 (at the Prek Kdam ferry crossing he saw female POL Pot soldiers undress and tie-up two people, probably soldiers, and shoot them with automatic weapons); T. 5 December 2012 (KIM Vanndy), pp. 83-84, 92; T. 6 December 2012 (KIM Vanndy), pp. 20-21 (Civil Party KIM Vanndy recounted how his uncle, a colonel dressed in a military uniform, was parking in front of his house on the morning of 17 April 1975, when a Khmer Rouge soldier approached and shot him, stating "that's what happens to a traitor" and that all traitors had to be smashed).

[1519] T. 28 January 2013 (Al ROCKOFF), pp. 20, 32-33 (saw hundreds of disarmed soldiers travelling under guard and being marched west from the intersection of Monivong and Sihanouk, presumably towards the Olympic Stadium; about one third of the LON Nol soldiers had their hands up, and there were not many Khmer Rouge travelling with them), 34 (citing Book by R. NEVEU: *The Fall of Phnom Penh*, E3/3208, ERN (En) 00432470, photo depicting the same event); BOTH Soth Civil Party Application, E3/4823, 4 December 2008, p. 4, ERN (En) 00840000 (married to a LON Nol sailor, stated Khmer Rouge soldiers entered the barracks near Chroy Changvar and arrested government soldiers); EAM Tres Civil Party Application, E3/4822, undated, p. 4, ERN (En) 00893354 (a LON Nol soldier who surrendered, was arrested by a Khmer Rouge soldier near his barracks at Chroy Changvar, had his hands tied behind his back and was tied to 12 other people, and escorted to the river bank); Refugee Accounts, E3/4590, p. 228, ERN (En) 00820546 (a law student stated that on 17 May [sic] 1975 he saw Colonel HAK Matano and Commander 266 NGEUV PECH gunned down; on 18 May [sic] 1975 he saw the Khmer Rouge arresting the colonel from 5th battalion, many officers and many ministers, and driving them away in in jeeps, about 20 vehicles in all, to Phnom Praseth; he thought they were killed); *Further Submission from the Government of Canada under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1806, 8 September 1978, p. 8, ERN (En) 00087579 (attached witness statement states her uncle, a LON Nol military official, was arrested before her eyes).

[1520] *See e.g.* Refugee Accounts, E3/4590, p. 229, ERN (En) 00820547 (a law student stated that while he and his family were captured and sent to build dikes, the Khmer Rouge took the soldiers elsewhere); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 3, ERN (En) 00399168 (a former LON

immediately killed, they disappeared and were never seen again by their families. While some accounts reported that the soldiers were taken to be killed elsewhere,[1521] another stated that the soldiers were imprisoned.[1522]

509. As the evacuation proceeded, former Khmer Rouge soldiers reported they were instructed to kill all identified Khmer Republic soldiers.[1523] Indeed, according to

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Nol soldier saw that at a checkpoint at Chamkar Mon (Royal Palace) males were separated and sent into the glass factory, and then exited the factory with their thumbs tied together with string and were walked in lines of ten or more persons to Phnom Ta Mao).

[1521] SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 4, ERN (En) 00399169 (a former LON Nol soldier who saw males separated at a checkpoint at Chamkar Mon [Royal Palace] and subsequently emerge with their thumbs tied to each other, stated that one of the men who escaped told him that all those who had been tied up were killed); SAU Sary Civil Party Application, E3/5372, 27 August 2008, p. 5, ERN (En) 00870324 (at Skun, her husband, a former Radio Specialist Soldier during the LON Nol Regime, and daughter, aged ten, were taken away to be executed by Khmer Rouge soldiers; she did not know why); KIM Sarou Victim Complaint, E3/5435, 22 May 2009, p.7, ERN (En) 00810026 (when the Khmer Rouge entered Phnom Penh, they arrested her two elder brothers, both LON NOL soldiers, and took them away to be killed without any reasons); SAO Thoeun Victim Complaint, E3/5436, 10 May 2009, p. 6, ERN (En) 00873857 (the Khmer Rouge arrested her father, KIM Seth, a soldier, and took him to be killed); Refugee Accounts, E3/4590, p. 205, ERN (En) 00820523 (on 3 June 1976 PECH Ling Kong stated that during the deportation, they insisted that the officers should assemble in a separate location, claiming that they were going to take them back to work in Phnom Penh; after assembling them, they drove them away in lorries and killed them); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 65, ERN (En) 00170756 (a LON Nol soldier captured in 1970 and sent to Amleang where he claimed LON NOL soldiers captured between 1970-1972 were held, stated that a new batch of mostly soldiers and civil servants, altogether numbering about 3,000, came to Amleang in 1975, and the officers were executed almost immediately while the others were put to work at Ta Rang, clearing the forest, planting cotton or growing rice); PHAN Yim Victim Complaint, E3/5424, 17 February 2009, p. 7, ERN (En) 00873875 (while walking towards Chaom Chao roundabout, her husband was arrested, put on a truck and sent back to Phnom Penh because he had been a LON Nol soldier; during the arrest, they said they would take him to work, but he has since disappeared); ROU Ren Civil Party Application, E3/4694, 14 October 2008, ERN (En) 00398344 (on 17 April 1975, they arrested his father and detained him in Office 15 accusing him of being a 50-house chief in the LON Nol regime; he heard shortly after that his father was seriously tortured and killed in Office 15).

[1522] SEANG Thann Civil Party Application, E3/5020, undated, p. 1, ERN (En) 00893426 (her husband, a LON Nol civil servant who was on duty at his bank, disappeared on 17 April and his whereabouts have since been unknown; it was said he was taken to Tuol Sleng prison); EAM Tres Civil Party Application, E3/4822, undated, pp. 4-5, ERN (En) 00893354-55 (a LON Nol soldier who surrendered, was arrested by a Khmer Rouge soldier near his barracks, was tied to 12 other people, and escorted to the river bank. He and hundreds of other people were forced to board a boat which took them to the east side of Mekong River in Kandal Province, where an unknown Khmer Rouge Commander said Angkar allowed them to survive, but they would be sent to be re-educated. They then walked for 2 days through forests to reach a village in Khnhung District, Kampong Cham Province, where the Khmer Rouge investigated the backgrounds of the 500 people for five days, before imprisoning the 500 people at Tonle Bet Chang Hae Revolutionary Prison).

[1523] LONG Mary Interview Record, E3/5540, 31 August 2009, ERN (En) 00384416 (a former Khmer Rouge soldier, stated they wanted to prevent civilians from mixing with LON Nol soldiers because the latter disguised themselves amongst civilians; her unit received orders from her superior, Sary, that if they found LON Nol soldiers, they could kill them right away); KHAT Khe DC-Cam Statement, E3/5598, 15 January 2005, p. 1, ERN (En) 00526857 (a former member of the artillery special forces of the North Zone stated most of the LON Nol soldiers found two or three days after 17 April were

KUNG Kim, as LON Nol soldiers shed their uniforms and thus increasingly blended into the civilian population, the Khmer Rouge were ordered to shoot "any remaining people" in Phnom Penh.[1524]

510. A few days after 17 April, pursuant to instructions to ensure that only Khmer Rouge soldiers remained in the city and everyone had been evicted, Khmer Rouge soldiers conducted another search of the city and sought to flush out those in hiding by cutting off the water supply.[1525] Those found who had resisted leaving after the first orders to evacuate were regarded as enemies and were to be arrested, shot or killed.[1526] Khmer Rouge soldiers exchanged fire with Khmer Republic soldiers found

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executed, although some were merely re-educated); SEANG Chan Interview Record, E3/5505, 23 October 2009, p. 4, ERN (En) 00399169 (a former LON Nol soldier, heard Khmer Rouge troops saying to go ahead and kill anyone that they knew had been a soldier while he was crossing to the east bank at Neak Loeung to head to his birthplace); T. 5 June 2013 (Sydney SCHANBERG), p. 58 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 96, noting that on 23 April 1975 a French businessman in the compound reported that the Khmer Rouge said they were still cleaning out military people from the old regime who had gone into hiding in the city).

[1524] T. 24 October 2012 (KUNG Kim), p. 102.

[1525] T. 24 October 2012 (KUNG Kim), pp. 86-87 (*citing* KUNG Kim Interview Record, E3/3959), 88 (they had to ensure that the minority of people who stayed behind left the city as well), 92 (*citing* KUNG Kim Interview Record, E3/3959, ERN (En) 00278682, noting they had to conduct searches and drive the people away; they received orders to cut off the water and electricity for a half-month; they captured those who came down and sent them to their superiors); T. 25 October 2012 (KUNG Kim), pp. 53, 57 (this further plan was only conveyed to them after the majority of people had left the city; they were tasked with removing the remaining people from their houses and apartments and received orders to cut the water supply to force people to come down and leave); SEM Am Interview Record, E3/5149, 5 March 2008, p. 3, ERN (En) 00205044 (a former Khmer Rouge soldier stated that as some locations still had soldiers hiding in the concrete houses in order to fight, they closed the city, and turned off the water for one month, forcing those soldiers to come out); HIM Han Interview Record, E3/5150, 6 March 2008, pp. 2-3, ERN (En) 00223350-51 (a former Khmer Rouge soldier based near Oudong, stated he received instructions one week after 17 April to enter the city and clean out Phnom Penh, although the city was already empty); Refugee Accounts, E3/4590, p. 205, ERN (En) 00820523 (on 3 June 1976 PECH Ling Kong stated that they cut off the water and electricity supply in order to make it easier to deport the populace and once the people had vacated the city, they searched each and every house for any people that might be left behind); *See also*, French Embassy Telegram, E3/4135, 20 April 1975 (reports that several parts of the city were in flames, the water supply had been cut off and the water purification plant had reportedly been destroyed).

[1526] T. 24 October 2012 (KUNG Kim), pp. 86-87 (*citing* KUNG Kim Interview Record, E3/3959, ERN (En) 00278683, Ta Yim gave them orders to kill people who would not leave), 92 (*citing* KUNG Kim Interview Record, E3/3959, ERN (En) 00278682, noting there were no rules at all against shooting the people; he never saw anyone punished for having shot people), 102-103, 106-107 (after the majority of the population had been evacuated, special groups and the remaining squads had to deal with the remaining people; there was an order that these remaining people should be treated as adversaries and could be shot dead if the opportunity arrived); T. 25 October 2012 (KUNG Kim), pp. 46-47 (recounting how they searched a building after a grenade was thrown at them from the upper floors of that building, and found LON Nol soldiers); SEM Am Interview Record, E3/5149, 5 March 2008, p. 3, ERN (En) 00205044 (a former Khmer Rouge soldier, he saw Khmer Rouge soldiers kill those surrendering soldiers who were flushed out in subsequent searches at the Chroy Changvar Bridge; of those soldiers, four to ten who had lost limbs were pushed into the river; he also personally saw a company chairman in the 310th Division shoot three LON Nol soldiers at the dock in front of the Royal Palace); Report by

during these subsequent searches, killing some of them, as well as inflicting some civilian casualties.[1527]

511. In the days following the evacuation, the Khmer Rouge announced by radio and via loudspeaker in several areas around Phnom Penh that Khmer Republic officials should turn themselves in, reveal their former ranks and either return to Phnom Penh to collaborate or join the Khmer Rouge army.[1528] According to SUM

S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 45, ERN (En) 00170736 (UM Samang, from tambon 21, Eastern Region stated that there was still some occasional fighting in Phnom Penh in May 1975, this was the suppression of the remaining LON Nol troops and people); VUNG Vei DC-Cam Interview Transcript, E3/5686, 18 January 2005, pp. 12-13, ERN (En) 00874659-60 (a former Khmer Rouge soldier involved in the evacuation, stated soldiers ordered people to leave and those who insisted on staying were regarded as the enemy; they were arrested and placed in a battalion station).

[1527] T. 24 October 2012 (KUNG Kim), pp. 86, 92, 102-103; T. 25 October 2012 (KUNG Kim), pp. 10, 23. *See also*, T. 25 October 2012 (KUNG Kim), p. 49 (there was no gunfire or fighting during the evacuation, but there was more fighting after the evacuation).

[1528] T. 5 November 2012 (SUM Chea), pp. 16-17, 30-31 (*citing* SUM Chea Interview Record, E3/3961, ERN (En) 00223346, seven or eight days after liberation, loudspeaker announcements called for LON Nol soldiers of whatever rank to return to their duty stations; people were told to reveal their background - for example, what rank they held before, so that they could be offered the same titles when they joined the Khmer Rouge; the broadcasts were for everyone, irrespective of their prior rank), 33 (it was four or five days after the liberation of Phnom Penh), 63 (he heard from people in KOEUN's group that loudspeakers broadcast the announcements), 73-74 (KOEUN, a former regiment commander, was fierce and implemented the order straight away), 99 (KOEUN announced by loudspeaker that people should come forward to work in Phnom Penh), 100-101 (the witness never heard the announcements but KOEUN told him about them and that KOEUN would be going out with loudspeakers to appeal to the people to come forward); T. 14 November 2012 (MEAS Saran), pp. 112-114 (four or five days after the evacuation of Phnom Penh, an announcement was made via loudspeaker calling on civil servants, soldiers and senior military officials to return to Phnom Penh to help rebuild the country because the war had ended; although some people decided to return to Phnom Penh based on this announcement, MEAS, a former civil servant, did not as he suspected something was wrong); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, p. 13, ERN (En) 00087549 (KONG Samrach stated that hundreds registered after a loudspeaker announcement in Chbar Ampov calling for all officers, members of parliament, higher officials to register themselves before returning to Phnom Penh to continue their functions); TUON Sameth Victim Complaint, E3/5453, 16 November 2009, ERN (En) 00871788 (four or five days after 17 April, trucks equipped with loudspeakers along National Road No. 1 from Phnom Penh to Kien Svay requested, inter alia, troops holding the rank of Second Lieutenant to Colonel to gather at Chbar Ampov as these people would be taken to Phnom Penh to work; all of them were killed); KHOEM Nareth Interview Record, E3/1747, 16 July 2008, p. 3, ERN (En) 00243009 (at Thal Tortoeng Khmer Rouge soldiers announced by loudspeaker that those who previously had been soldiers, PMs and police officers, with any ranks, were needed and would be accepted for work with the party; he saw the soldiers gather in a group but did not know where they were taken as he continued his journey); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, pp. 3-4, ERN (En) 00156847-48 (after Wat Champa 6 or 7 Khmer Rouge forces announced by loudspeaker that high-ranking officials should appear before them); SAM Sithy Interview Record, E3/5201, 7 August 2008, p. 3, ERN (En) 00275139 (at Wat Chrak Sdek the Khmer Rouge made loudspeaker announcements looking for LON Nol regime officials and inviting the brothers and sisters who did any work in the past to return to their former work); SENG Mardi Interview Record – Annex (book excerpt), E3/5614, undated, p. 1, ERN (En) 00519569 (announcements requesting the return of all former civil servants and military personnel to central Phnom Penh blared through loudspeakers as

Chea, former regiment commander KOEUN told SUM Chea's division to make such announcement in order to lure in former LON Nol soldiers after which they would be killed.[1529] There is evidence that Khmer Republic soldiers who heeded these calls were executed at various locations in or around Phnom Penh, including a place west of Preak Pnov and in Tuol Kork, or disappeared.[1530]

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their assistance was needed; Angkar promised to take care of the families of those who went); Refugee Accounts, E3/4590, pp. 169, ERN (En) 00820487 (interviewee stated it was broadcasted over the radio car that all officers from Second Lieutenant upwards must return to Phnom Penh), 252-253, ERN (En) 00820570-71 (on 29 July 1976 Lieut. NON THOL stated that in May 1975, they said that the liberation war was over and Angkar called for soldiers of all ranks, army technicians, and factory workers to be ready immediately, in order to return to help rebuild the army, the ministries and the factories).

[1529] T. 5 November 2012 (SUM Chea), pp. 16-17 (*citing* SUM Chea Interview Record, E3/3961, ERN (En) 00223346).

[1530] T. 5 November 2012 (SUM Chea), pp. 18 (those who would pop up would be instantly arrested and eventually killed), 23 (it was only after the loudspeaker announcements when people turned themselves in that they managed to catch some LON Nol soldiers), 31-33, 113 (while claiming he never witnessed the killing of LON Nol soldiers, he heard from others that four or five days after 17 April, the LON Nol soldiers were brought to be killed to a place west of Preak Pnov where KOEUN both ordered the killings and was the executioner, it took about one day and one night), 42 (LON Nol soldiers, but not officials, were also executed in Tuol Kork, after the broadcast when they were tricked to reveal their identities), 59 (KOEUN told him that former LON Nol soldiers who responded to the announcements and falsely claimed they had a higher rank were also killed), 63-64 (they were taken away in their military trucks and killed); T. 24 October 2012 (LAY Bony), pp. 27-28 (one of her in-laws was a colonel who, after hearing a broadcast announcement for all military officers to return to Phnom Penh to resume their work, did so; the colonel disappeared from that day, so the family assumed he had been killed by the Khmer Rouge); CHHOR Dana Civil Party Application, E3/4664, 26 October 2007, pp. 3-4, ERN (En) 00156847-48 (after announcements made at Wat Champa her father CHHOR Sien, a former governor and commander of Kandal Province, and another 7 persons presented themselves to the Khmer Rouge who recorded their names and pushed them into trucks; her family waited for news from her father for three months but there was no information about him); SAM Sithy Interview Record, E3/5201, 7 August 2008, p. 3, ERN (En) 00275139 (after registering the people who came forward after loudspeaker announcements at Wat Chrak Sdek and distributing rice to them, the people were divided into small groups and taken away by the Khmer Rouge; the group in which SAM was were led away and shot to death, although he, a child at the time, survived). *See also*, KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, p. 4, ERN (En) 00293365 (a former chairman of a company in Division 310, stated that in May 1975 there was an order from the upper echelon to arrest high-ranking civil servants of the LON Nol regime who refused to leave Phnom Penh, and the LON Nol soldiers who were being treated in Preah Ket Mealea Hospital; those who joined in arresting people told him directly that a great number of LON Nol officers and their servants were arrested from Phnom Penh and killed and thrown into a well in Tuol Kork area; the upper echelon was likely SON Sen who controlled all divisions); SENG Mardi Interview Record, E3/5613, 26 March 2010, pp. 3, 5 ERN (En) 00494399, 00494401 (two or three days after he was evacuated, and following an appeal by the government, his father volunteered to return to Phnom Penh; it was the last time he saw his father); SENG Mardi Interview Record – Annex (Theary C. SENG's book excerpt "Daughter of the Killing Fields: Asrei's Story"), E3/5614, undated, p. 1, ERN (En) 00519569 (her father went to Phnom Penh after announcements requesting the return of all former civil servants and military personnel to central Phnom Penh and believing Angkar's promise to take care of the families of those who went; it was only several months later that it dawned upon her that the Khmer Rouge had lured former LON Nol soldiers and civil servants - the enemies of the new regime who had betrayed the nation - to their death); KOY Mon Interview Record, E3/369, 29 May 2008, p. 7, ERN (En) 00272719 (a former Khmer Rouge soldier in Division 170 stated that he had LON Nol soldiers surrender their arms and take off their uniforms, they did not harm them; however the Southwest Zone troops invited the LON

10.2.16. ***Checkpoints***

512. At checkpoints along the roads leading out of Phnom Penh and in certain other towns, evacuees were searched and questioned about their biography, including their family members and the work they did in Phnom Penh.[1531]

Nol officers to board a truck so that they would be re-recruited to their offices; all former soldiers and those who boarded the trucks may be killed).

[1531] T. 27 May 2013 (YOS Phal), pp. 71, 102-104 (a former LON Nol policemen, while still wearing his uniform, he was searched for weapons at Pet Chin by a group of Khmer Rouge soldiers in civilian clothes and armed with shotguns), 72-75, 94 (later, at Ph'av District Khmer Rouge soldiers again asked about his biography and occupation; noting that LON Nol soldiers and police were being executed, YOS concealed his identity and stated he was a civil servant), 77, 93-94 (he was again asked at the Cheung Prey Pagoda); T. 23 October 2012 (LAY Bony), p. 96; T. 24 October 2012 (LAY Bony), p. 29 (at a military checkpoint they were told that they could not proceed further and that they should enter the village and not wander around); T. 5 December 2012 (KIM Vanndy), p. 101 (described mobile checkpoints where soldiers patrolled either on foot or bicycle); T. 22 October 2012 (CHUM Sokha), pp. 39, 41 (near Kampong Tuol his father and his uncle were requested to register their names with Khmer Rouge soldiers they encountered; soldiers required all men over 30 to register); T. 12 December 2012 (Denise AFFONÇO), pp. 73, 112 (at a roadblock after Takhmau Khmer Rouge tore up her French identity papers stating "As of today, there are no longer any French or any Vietnamese or any Chinese, everybody is Khmer. Go forward, Angkar is waiting for you."); T. 22 November 2012 (MEAS Saran), pp. 5-9 (en route, the Khmer Rouge stopped the evacuees at numerous checkpoints and questioned people about their native village, who their family was and what work they did in Phnom Penh); T. 5 December 2012 (PECH Srey Phal), pp. 26-27 (around 28 April 1975, at a checkpoint near Chamkar Daung soldiers searched each person and told evacuees that Angkar requested they leave all their belongings and if they did not, they would be accused of being an enemy of Angkar; the soldiers confiscated their gold, clothes and medicine); T. 7 February 2013 (PIN Yathay), pp. 22-24 (at Koh Thom the Khmer Rouge took his and his family's documentation and told them to continue on their journey; one kilometer further, they were asked their names, how many family members were with them, their age and occupation, and how much money in dollars and riel they had; the Khmer Rouge soldiers took around $3,000 dollars and allowed them to keep any riel that they had); T. 30 May 2013 (PO Dina), pp. 110-111 (when they arrived in Pursat, the Khmer Rouge forces researched the background of PO Dina and her husband, whom they suspected of being a colonel); T. 22 October 2012 (CHUM Sokha), pp. 46-47 (they were stopped and checked at Kampong Tuol location and again at Tboung Kdei village); T. 6 November 2012 (MOM Sam Oeurn), pp. 14-15 (the Khmer Rouge soldiers kept them under strict surveillance and kept asking what her husband's prior occupation was; they threatened them to tell the truth about their prior professions, saying that if the soldiers found out they had told them a lie, her and her family's life would be at risk); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, pp. 21-22, ERN (En) 00087557-58 (PAM Moeun stated when they arrived at Chambak on 22 April they were requested to state their biography and whether they were civilian or military); Refugee Accounts, E3/4590, pp. 37, ERN (En) 00820355 (interviewee stated that at Chamcar Leu, a village near Svay Teap, they were made to write their curriculum vitae four times in a row, and there were three tables with registers: civil servants, civilians and soldiers), 51, ERN (En) 00820369 (S stated that in Skuon they were asked to put themselves on the registers on four separate occasions); PHUONG Phalla Civil Party Application, E3/4757, 29 January 2008, p. 4, ERN (En) 00864243 (in May 1975 she and her family were detained and questioned for two days and nights at a detention office at Wat Phnum Den where the Khmer Rouge accused them of being Khmer Kraom or of having a Khmer body with a Vietnamese head, before they were released and sent to Kiri Vong District, Takeo Province); EAM Tres Civil Party Application, E3/4822, undated, p. 5, ERN (En) 00893354 (a LON Nol soldier arrested by a Khmer Rouge soldier and sent to the east side of the Mekong River in Kandal Province with hundreds of other people, stated that when they reached a village in Khnhung District, Kampong Cham Province, the Khmer Rouge investigated the backgrounds of the 500 people for five days, before

513. While one account describes how those identified as LON Nol soldiers were executed on the spot by young Khmer Rouge soldiers,[1532] more often than not they were placed aside, arrested or tied up, and then taken away.[1533] According to another refugee account, travelling soldiers received much closer scrutiny at checkpoints than did civilians.[1534] Witness MEAS Saran described how evacuees at checkpoints kept

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imprisoning the 500 people at Tonle Bet Chang Hae Revolutionary Prison); Refugee Accounts, E3/4590, 19 May 1976, p. 183, ERN (En) 00820501 (NI Bunly stated that on the way he saw Khmer Rouge soldiers in groups of 3 or 4 waiting to search everyone to confiscate watches, radio sets, gold and precious stones).

[1532] French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 6, ERN (En) 00517767 (soldiers fleeing with their families were easily recognised at checkpoints and were forced to take off their shoes and jackets and were then shot on the spot; between Phnom Penh and Prek Dam he witnessed the execution of several officers who were asked to step 20 m away, and were then shot in the back by communist girls between 15 and 20 yrs armed with rifles).

[1533] T. 30 May 2013 (NOU Hoan), p. 26 (observed that those who were spotted as LON Nol soldiers were taken to one side); T. 23 October 2012 (LAY Bony), p. 97 (her mother told her that a family member, a colonel, was gathered and returned to Phnom Penh in order to work in Phnom Penh as he was informed); T. 5 December 2012 (PECH Srey Phal), p. 23 (those who registered their names did not proceed further with us, the Khmer Rouge soldiers put them aside and they were taken by another group); T. 22 October 2012 (CHUM Sokha), pp. 38-40 (his father, a former LON Nol soldier, and uncle were separated from the group at a checkpoint, although they later managed to escape and re-find their family), 44 (when they questioned people and people told them that they were LON Nol soldiers, then they would be detained and tied up); Civil Party CHHUM Sokha Interview Record, E3/5788, 2 September 2009, ERN (En) 00380711-12 (at places along the way to the village Khmer Rouge soldiers distributed food and interviewed people about their personal information and if they found something wrong with them, they'd be taken away, for example, at Kampong Tuol Village they arrested his father when they found out he was a LON Nol soldier; LON Nol soldiers were tied up with one thread and those arrested were to be killed); PECH Chim Interview Record, E3/4628, 26 August 2009, p. 7, ERN (En) 00379307 (a member of the district committee who welcomed evacuees in his area, he was told by the soldiers' wives who arrived in his area that during the evacuation Khmer Rouge soldiers stationed along the roads picked out the LON Nol soldiers from the crowd one by one, but allowed their wives to continue their journey); TIENG Sokhom Victim Complaint, E3/5402, 23 October 2008, p. 6, ERN (En) 00870347 (saw a family of four arrested and taken by militiamen to a village in Kong Pisei District, Kampong Speu Province after one family member was identified as an ex-colonel in LON Nol's regime); NUON Mom Victim Complaint, E3/5425, 16 February 2009, p. 6, ERN (En) 00829759 (saw her husband, who had served as LON Nol soldier, arrested along the road at Wat Vihea Khpos, in Leay Bour Sub-district, accused of being a LON Nol soldier; after the two Khmer Rouge soldiers had arrested him and other people in lines, they took them away but she did not know where he was taken to); KOEM Raen Victim Complaint, E3/5431, 2 June 2009, p. 6, ERN (En) 00830729 (at Kbal Thnal Khmer Rouge forces asked her father about his occupation in LON Nol's regime; after her father replied honestly that he had served as a LON Nol soldier, the Khmer Rouge told her father to stand aside and told her mother and the children to continue to their birth place in Svay Rieng Province); BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830 (at Bak Ka Pagoda between Kandal and Kampong Speu Provinces, they were questioned about their backgrounds and promised that they would be allowed to resume whatever role they had had before; those who said they had been teachers, doctors, soldiers or persons of rank were segregated and sent away and killed); KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-4, ERN (En) 00426475-76 (her husband, a former LON Nol soldier, was taken away from her while they were evacuating; Angkar said they needed him to help clear enemies in the city).

[1534] U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, para. 11, ERN (En) 00495561.

disappearing after being stopped and questioned by the Khmer Rouge.[1535] Several evacuees saw Khmer Republic soldiers walking in single file and tied to each other in various ways,[1536] although few accounts detail the fate of these soldiers. While some subsequently learned that certain former Khmer Republic soldiers had been killed,[1537] others never received any news of those family members who were taken away.[1538] According to Witness PECH Chim, a member of the district committee who welcomed evacuees in his area, most of the women who had been married to former LON Nol soldiers and who he saw after Phnom Penh was seized, told him that the military 'took out' their husbands during the journey, meaning they had disappeared and that the women were widows.[1539] Yet another account stated that at Chamcar Leu,

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[1535] T. 22 November 2012 (MEAS Saran), pp. 5-9 (en route, the Khmer Rouge stopped the evacuees at numerous checkpoints where they were questioned, and those questioned kept disappearing gradually; one senior military officer concealed his identity and covered his face; MEAS Saran also lied about his background and said he was a taxi driver because he did not trust the Khmer Rouge).

[1536] T. 22 October 2012 (CHUM Sokha), pp. 40, 42, 43-44 (his father, a former LON NOl soldier who had been taken aside at a checkpoint, but escaped and re-found his family, said that he saw many LON Nol soldiers had been detained by the Khmer Rouge soldiers and tied in a line; about 10 days to 2 weeks after liberation, the civil party also saw Khmer Rouge soldiers walk two lines of people – more than 20 people total - in military and civilian clothes tied together by red and white thread; some detainees were tied by their thumbs and others were tied with their hands behind their back); T. 30 May 2013 (PO Dina), pp. 98, 109-110 (near the area of Boeung Snao saw soldiers from the LON Nol administration tied up and frogmarched in line heading in the opposite direction, back to Phnom Penh); T. 23 October 2012 (LAY Bony), p. 90; T. 24 October 2012 (LAY Bony), p. 27 (was told by others that the LON Nol soldiers had their arms tied behind their back; the Khmer Rouge could look at people's ankles and tell whether they were former military officers or soldiers). *See also,* KUNG Narin Civil Party Application, E3/4773, undated, p. 2, ERN (En) 00890598 (saw an American being tied up to a column of Svay Chrum Pagoda); BOTH Soth Civil Party Application, E3/4823, 4 December 2008, p. 4, ERN (En) 00840000 (married to a sailor under the LON Nol regime, during the evacuation from Phnom Penh, she saw government soldiers were tied up and marched along).

[1537] Civil Party CHHUM Sokha Interview Record, E3/5788, 2 September 2009, ERN (En) 00380711-12 (LON Nol soldiers were tied up with thread and those arrested were to be killed); TIENG Sokhom Victim Complaint, E3/5402, 23 October 2008, p. 6, ERN (En) 00870347 (she later learned that a family of four who had been arrested after one family member was identified as an ex-colonel in LON Nol's regime had been killed); BENG Boeun Civil Party Application, E3/4719, 30 January 2009, p. 5, ERN (En) 00436830 (at Bak Kâ Pagoda between Kandal and Kampong Speu Provinces, those who said they had been teachers, doctors, soldiers or persons of rank were segregated and sent away and killed).

[1538] NUON Mom Victim Complaint, E3/5425, 16 February 2009, p. 6, ERN (En) 00829759 (her husband, who had served as LON Nol soldier, and had been arrested along the road at Wat Vihea Khpos, in Leay Bour Sub-district, and taken away has since disappeared); KOEM Raen Victim Complaint, E3/5431, 2 June 2009, p. 6, ERN (En) 00830729 (she has not received any information about her father, a former LON Nol soldier who revealed himself as such to the Khmer Rouge at Kbal Thnal, since); KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-4, ERN (En) 00426475-76 (she has never seen her husband, a former LON Nol soldier, again since he was taken away from her while they were evacuating, and does not know what happened to him).

[1539] T. 1 July 2013 (PECH Chim), pp. 32-33 (affirming Interview Record, E3/4626, ERN (En) 00380135). *See also,* T. 4 December 2012 (TOENG Sokha), p. 47 (while soldiers and police were also evacuated from Phnom Penh she and her family never saw them living together with the Base People any longer); KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-4, ERN (En)

near Svay Teap, those identified as soldiers were sent to Stung, where soldiers had to clear the land and develop the forest.[1540]

514. In some locations, former officers, civil servants and other categories of professionals among the evacuees were urged to register their names with the Khmer Rouge soldiers with the promise of being able to return to Phnom Penh, although many distrusted the promises.[1541] Witness François PONCHAUD was told by a 50 year old man from Kien Svay of a similar call for registration in Kien Svay and Battambang sometime on 22 and 23 April 1975, after which those who signed up were rounded up and killed.[1542] Some accounts state the identified Khmer Republic officials were taken away and never seen again.[1543]

00426475-76 (she does not know what happened to her husband, a former LON Nol soldier, was taken away from her while they were evacuating).

[1540] Refugee Accounts, E3/4590, p. 37, ERN (En) 00820355.

[1541] T. 5 December 2012 (PECH Srey Phal), p. 22 (heard that former soldiers, officials, teachers, doctors, were needed to work in Phnom Penh after the city was finally reorganised and those people would be allowed to come back; to do so those people had to register their names with the Khmer Rouge soldiers); T. 30 May 2013 (PO Dina), pp. 96-97, 110-111 (at Preaek Aeng they heard loudspeaker announcements telling people who used to work in Phnom Penh to register; suspicious of this, PO Dina and her husband decided not to register and continued to walk to Kandal Province but when they got there, they were all registered); T. 30 May 2013 (NOU Hoan), pp. 25-26 (at Champa Pagoda and Chbar Ampov Pagoda there was a blackboard stating that public servants, police officers, or military officers should register their names in order to be returned to Phnom Penh to reorganise the country; while some registered, NOU Hoan did not believe that he would be returned to Phnom Penh, he knew only death awaited); Refugee Accounts, E3/4590, pp. 125, ERN (En) 00820443 (a former LON Nol soldier who put on civilian clothes after Phnom Penh fell waited for over a month in Dey with many others, including officers and civil servants, hoping to return to Phnom Penh, stated that the Khmer Rouge wrote on a blackboard that all officers, from second lieutenant above had to register to return to Phnom Penh; he did not register as he had a bad premonition), 137, ERN (En) 00820455 (at Chrouy Ampel on National Road No. 1 he found many soldiers and parliamentarians, including Ith Suong, Hung Hong Sak, Naradipo and Lay Sinh Nguon; after the Khmer Rouge wrote on a blackboard that officers and members of parliament must go and be registered, many of them did; at Prek Por, as in Koki, it was announced over loudspeakers that former soldiers, civil servants and doctors must go and be registered but nobody went, and everyone claimed to be a worker), 183, ERN (En) 00820501 (NI Bunly stated that around 25 April, in Vat Kak the witness saw a Khmer Rouge writing the names of officers, senior state officials and figures of authority; they said they were taking them to assist in town; in the group they led away he recognized Hang Tung Hak, Pan Sothi, Phi Thienlay, Uk Yon, Si Chae (lawyer), Si Tek (commander of the engineering corps), Sisowath Duong Chivin and several officers he did not know), 198, ERN (En) 00820516 (a former LON Nol soldier, stated that behind the pagoda in Champa, the Khmer Rouge wrote on a board that officers from 2nd lieutenant upwards must go to Phnom Penh for registration, while teachers, students and professors would be registered later. Every day, he saw large numbers of officers being registered and driven away by Khmer Rouge in lorries, including General Chhay Lay, Gen. Pen Rada, Colonel Neang San, Lt. Col. Nhong Chan Sovat, Lt. Col. Kauk Ol and many other officers; they left their families behind at the pagoda in Chruui Ampel).

[1542] T. 10 April 2013 (François PONCHAUD), pp. 14, 28-29, 56. *See also*, T. 10 April 2013 (François PONCHAUD), p. 27 (the wives of high-ranking soldiers told him that after Angkar assigned their

515. Although numerous Khmer Republic officials were sent to villages for work or re-education in the days following 17 April 1975,[1544] in view of the targeted searches, announcements and questioning of evacuees at checkpoints, all seeking to flush out such officials, the Chamber is satisfied that Khmer Rouge soldiers targeted officials of the Khmer Republic and that many Khmer Republic officials were either arrested and thereafter disappeared, or were killed in the days following 17 April 1975.

10.2.17. *Treatment of the Evacuees Upon Arrival*

516. For those who managed to reach a destination, the welcome experienced by the evacuees varied depending on their destination. As some people had been previously instructed to prepare to accept the evacuees,[1545] some new arrivals were initially greeted and helped by the 'base people' or 'old people' who gave the evacuees food and shelter, and even built them homes.[1546]

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husbands to return to Phnom Penh to rebuild the country, they went, but they killed them; it was the same in Battambang and in Kien Svay).

[1543] Refugee Accounts, E3/4590, pp. 125, ERN (En) 00820443 (many fell into the trap, signed up, were given rice and were then taken away by truck and never seen again; there were colonels, generals, etc.; he had not registered and moved on to Meat Krasas), 137, ERN (En) 00820455 (at Chrouy Ampel those who registered were led away and never heard from again which worried their families; even some families that persistently requested to be allowed to join their husbands were led away).

[1544] *See* Section 10: Movement of the Population (Phase One), paras 506, 513.

[1545] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 36, ERN (En) 00170727, (Fr) 00648992 (a man from tambon 13 (Takeo) in Southwest stated that in preparation for the evacuation of Phnom Penh the Organization stored rice in storehouses in the villages); U.S. Embassy in Bangkok Telegram, Subject: Khmer Refugee Walks out from Phnom Penh, E3/3004, June 1975, paras 1, 5, ERN (En) 00495557-58 (at one checkpoint in the North Zone, somewhere on Route 6, 12 kilometres from Prek Kdam Ferry, heads of families who were evacuated received forms from the 'Northern Region Exodus Reception Committee').

[1546] T. 5 December 2012 (KIM Vanndy), pp. 99-100 (the base people in Tuol gave his family some rice in exchange for the clothes they had with them); T. 4 June 2013 (BAY Sophany), p. 10 (when they reached Traeuy Sla she and her children took refuge in a house of the Base People, who gave them food); T. 4 December 2012 (TOENG Sokha), p. 95 (they were given food and potatoes); T. 22 November 2012 (OR Ry), p. 102 (at Tboung Damrei village our grandparents greeted us and gave us food and we stayed with them for a few days); T. 1 July 2013 (PECH Chim), pp. 30, 56 (a Khmer Rouge member of the district committee who welcomed evacuees in his area, he said they had a meeting at Popel Commune to receive the evacuees, where they gave them water and food and settled them into houses with palm leaf roofs); PAL Rattanak Civil Party Application, E3/4839, undated, p. 4, ERN (En) 00893372 (when he arrived in Prey Veng, the Khmer Rouge assigned him to stay with some old residents in Chamkar Kuoy Village); AU Hau Interview Record, E3/5255, 18 November 2008, p. 2, ERN (En) 00250043 (he had the villagers help the evacuees build houses for them to stay in); KHIM Pang Interview Record, E3/5510, 27 October 2009, ERN (En) 00411490-91 (as village chief, he had 10 houses built for the evacuees; he was also told by TA Khaov, the commune deputy chief, to feed them); NOB Kan Civil Party Application, E3/4884, undated, pp. 2-3, ERN (En) 00891258-59 (when new people from Phnom Penh arrived in Chhuk District, Kampot Province, the commune and village chiefs

517. However, the Chamber notes that well before 17 April 1975 the Khmer Rouge had been fomenting resentment towards city people.[1547] Many other evacuees thus recounted how they were labelled '17 April people' or 'new people' to distinguish them from the local population (known as '18 April people', 'old people' or 'base people'), viewed with suspicion as capitalists or feudalists, and shunned and told to move on.[1548] BAY Sophany recounted how Khmer Rouge soldiers reprimanded the

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told the new people to build their houses with the base people); MORM Phai Buon Civil Party Application, E3/4901, 20 October 2003, p. 6, ERN (En) 00944525 (at Sdok village in Kampong Speu Province the base people were kind and treated the evacuees as brothers and sisters); YUNG Yem Interview Record, E3/415, 31 August 2009, p. 3, ERN (En) 00375692 (a lot of Phnom Penh evacuees arrived in her village; there had been an instruction from the upper echelon about arrangements for the newly evacuated people: they were to have rice, water, and housing prepared); SOU Soeun Interview Record, E3/5294, 5 July 2009, p. 3, ERN (En) 00360111 (a Khmer Rouge village chief, stated there was a meeting among the district committee members to prepare for the arrival of the evacuees); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (the villages they journeyed across, although occupied by Khmer Rouge soldiers, provided them with food and shelter while manifesting a great deal of hospitality); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, pp. 28, ERN (En) 00170719 (the former courier for CHEY Suon aka NON Suon stated that in tambon 25 they were told to prepare for evacuees from Phnom Penh only on 18 April 1975; they were instructed to prepare food, water and lodging, to slaughter animals, to feed them and give them rice; each district was assigned a quota of a number of evacuees they should accept, and their presence would be temporary; if the evacuees caused burdens in the co-operatives they could go to the district committees to ask for surplus to solve the problem), 37, ERN (En) 00170728 (a man from tambon 13 (Takeo) in the Southwest stated Angkar's general line was that the evacuees were part of the people of Cambodia and not all enemies).

[1547] *See* Section 3: Historical Background, para. 112. *See also*, T. 30 July 2012 (ROCHOEM Ton), p. 71 (heard from the base and soldiers that those evacuated from Phnom Penh had been living a luxurious life and so it was fitting that they should have to endure difficulties like many others had had to do); T. 10 April 2013 (François PONCHAUD), p. 10 (the Khmer Rouge considered city dwellers corrupt and improper because they had long hair and wore improper clothes).

[1548] T. 5 December 2012 (KIM Vanndy), pp. 99-101 (his family was told that they were not allowed to stay in Tuol because they were 17 April people; those who were in the village which had been liberated earlier were referred to as 18 April people), 104 (he and his family were asked to settle in Palelai District; the Base People and 18 April people were not friendly to him and his family; they were instructed to live in a group and not to mix with the 18 April people); T. 22 November 2012 (OR Ry), pp. 102-103, 105-106; T. 30 May 2013 (PO Dina), pp. 97-99 (when they got to Kandal Province, her hometown, they were told they were 17 April People and could not stop there; although she begged them to stay there for some time as they were tired, they refused claiming their village was short of food, so they had to continue walking); T. 23 August 2012 (EM Oeun), pp. 74-75 (people from Phnom Penh who came to Sector 20, where he lived, were called 17 April People or New People); T. 19 October 2012 (YIM Sovann), p. 86 (at Pouthi Ban village her and her family were referred to as 17 April People and were mistreated by the Base People), 87 (reached Kay Roung Pagoda where they stayed for three days, before being moved again out of the place); T. 22 October 2012 (CHUM Sokha), pp. 83-84 (describing difference in treatment between 17 April People and Base People), 101 (he and his family were not warmly welcomed upon their arrival in their native village as "17 April People" were considered to be part of the oppressing class who were not loyal to the revolution); T. 6 November 2012 (MOM Sam Oeurn), pp. 17, 30-31, 37-38 (at Samraong Commune a Khmer Rouge soldier criticised her harshly for being from a feudalist family, failing to instruct her son to do anything and spoiling her son); T. 23 November 2012 (CHAU Ny), pp. 51 (in Trapeang Sab Commune he was warned he should change his name to mask his background as a Khmer Krom; he did so fearing he would be killed), 51, 53 (in Trapeang Sab where they stayed for 10 days to one month, base people regarded him as a 17 April person and a capitalist who reaped the peasants' benefits); T. 22 November

Base People for giving them food, as BAY and her family were considered 'new people' or '17 April people.' She testified that they were treated as a lower social class and that she and her children were chased to the outskirts of the village where they built their own shelter.[1549] Others subsequently received orders to leave or move elsewhere.[1550]

2012 (OR Ry), pp. 102-103 (as Tboung Damrei village was already under Khmer Rouge control, the Phnom Penh people were considered newcomers who could not mix with the Base People); T. 25 April 2013 (RUOS Suy), pp. 89-91 (the Khmer Rouge cadres provided no care for the newly arrived people, they were clearly classified as 17 April People or New People, and treated differently; although many of these people were trying to return to their home town or places where they had relatives, even when they managed to reunite with their family members, those people appeared very cautious when sharing food with the newcomers); KHIEV Horn Interview Record, E3/5559, 9 September 2009, p. 3, ERN (En) 00377368 (when they arrived in their home village, they were told they were still considered new people as they had left the village in 1972; as new people, they were not considered as the people of the Khmer Rouge's *Angkar*¸ but rather as people of the Khmer Republic and they were treated differently; one month later they were instructed to live in the refugee camp); SEN Phap Victim Complaint, E3/5391, 19 November 2008, p. 6, ERN (En) 00869808 (when they reached Takeo Province they were assigned to reside in Slaeng Village, Kouk Prech Commune, Kiri Vong District, where the base people called them 17 April People or remaining soldiers); CHEY Yeun Civil Party Application, E3/4824, undated, p. 3, ERN (En) 00891214 (evacuated people were regarded as '17-April people'; they were tracked and monitored at all times); NEANG Soeun Civil Party Application, E3/4841, undated, p. 2, ERN (En) 00893378 (when they first reached Preaek Touch, S'ang District, Kandal Province, the Khmer Rouge forbade the evacuees from staying at their relatives' houses, instead forcing them to stay with villagers for about a week, after which they later ordered the newcomers to stay apart from the old residents, even their relatives); KHUY Buntha Civil Party Application, E3/4949, undated, p. 6, ERN (En) 00872852 (when they arrived at their home village, Khmer Rouge cadres gathered all new people and assigned them to live in a new village only for new people called Phum Thmei Village, Kak Commune, Kong Pisei District (now Basedth District), Kampong Speu Province); KHOEM Tin Victim Complaint, E3/5404, 22 October 2008, p. 6, ERN (En) 00869795 (when they arrived at their home village they were not allowed to talk or live with their parents; they were told by the person in charge of the village that all people evacuated from Phnom Penh were enemies and that they were not allowed to talk to the base people); MEA Chhin Civil Party Application, E3/4680, 21 May 2008, ERN (En) 00885705 (the old people were brain-washed for many years and were told not trust the new people and to treat them with hatred); SIM Tun Interview Record, E3/5199, 4 August 2008, p. 4, ERN (En) 00275111 (a former Khmer Rouge soldier, he stated the 17 April people who had just been evacuated from Phnom Penh to District 12 were accused of being the enemy); NOB Nan Victim Complaint, E3/5423, 17 February 2009, p. 7, ERN (En) 00873836 (we were considered as 17 April people, so they kept their eyes on us all the time) SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178 (when they reached their birthplace, few of their relatives came to greet them because of their different status). *See also*, Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 28, ERN (En) 00170719 (the former courier for CHEY Suon, he stated that in tambon 25 they were told that of the evacuees from Phnom Penh, the former LON NOL soldiers, especially the officers responsible for lots of killing were to be considered enemies, and that other than Ministers, civil servants were not supposed to be considered enemies); Refugee Accounts, E3/4590, p. 137, ERN (En) 00820455 (people who had been "liberated" for a long time stayed put while the newly arrived had to leave).

[1549] T. 4 June 2013 (BAY Sophany), p. 10.

[1550] T. 12 December 2012 (Denise AFFONÇO), pp. 84-85; T. 6 November 2012 (MOM Sam Oeurn), pp. 19, 51 (after evacuating from Phnom Penh to Samraong Commune, she and her family were ordered to go to Preaek Koy); T. 30 May 2013 (NOU Hoan), pp. 27-28 (after arriving in his native village in Prey Veng Province he remained one week before being sent to another village about 3 km

10.2.18. *Completion of the Movement of the Population*

518. Phnom Penh was largely emptied of its inhabitants within one week of its fall.[1551] Although IENG Sary stated in a media interview in September 1975 that 100,000 people had returned to the town and more could if they wished to,[1552] this was clearly incorrect. While there is evidence that some people returned to the outskirts of Phnom Penh soon after the evacuation,[1553] and up to 20,000 people lived

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away); T. 22 November 2012 (OR Ry), pp. 102, 105-106 (after a few days at Tboung Damrei village, her native village, they were ordered to leave as they were not allowed to settle there).

[1551] T. 26 July 2012 (ROCHOEM Ton), pp. 58-61 (as at 19 April there were only a handful of people remaining in Phnom Penh); French Ministry of Foreign Affairs Telegram, Subject: Situation in Phnom Penh, E3/2703, 19 April 1975, p. 1, ERN (En) 00488013 (reporting total evacuation seemed to be nearing completion); French Ministry of Foreign Affairs Telegram, Subject: Request for Immediate General Evacuation, E3/2701, 20 April 1975, p. 1, ERN (En) 00488012 (reporting the capital was now entirely empty of inhabitants); T. 5 November 2012 (SUM Chea), pp. 16, 29, 57 (it took them around five to six days, and the city was empty); T. 8 April 2013 (CHHAOM Se), pp. 35, 37 (it took seven days to remove all the population from the city); T. 25 October 2012 (KUNG Kim), p. 11 (after a week's time, the chaos lessened, and people had mostly evacuated; in one month's time there were only pockets of remaining soldiers or civilians on upper-level floors); IENG Sary Interview by Stephen Heder, E3/89, 17 December 1996, ERN (En) 00417604 (Phnom Penh was empty by 22 or 24 April when IENG Sary arrived); T. 12 December 2012 (KHAM Van *alias* PHAN Van), p. 41 (Phnom Penh was empty and very quiet in May 1975, people did not dare walk about and there were no cars or motorcycles just a few soldiers standing guard); T. 20 May 2013 (IENG Phan), pp. 46-47 (a Khmer Rouge soldier, he was authorised to enter Phnom Penh about two to three weeks after the evacuation and he found the city quiet and only Khmer Rouge soldiers there); T. 28 January 2013 (Al ROCKOFF), pp. 79 (leaving Phnom Penh around 6 May 1975, described the absence of civilians, there was nothing except occasional armed Khmer Rouge soldiers), 87 (the evacuation took a couple of days); T. 9 April 2013 (François PONCHAUD), p. 25; T. 2 August 2012 (SUONG Sikoeun), p. 99 (the evacuation was almost complete when he entered Phnom Penh on 20 May 1975); T. 15 August 2012 (SUONG Sikoeun), p. 5 (when he arrived in Phnom Penh on 25 May 1975 there were no people in the city); T. 20 March 2012 (KAING Guek Eav), pp. 64, 66 (learned of the evacuation when he arrived in Phnom Penh in June 1975 and found the city empty, reported the evacuation ended on 31 May 1975); T. 11 January 2013 (CHHAOM Se), p. 58 (claimed the evacuation was complete within three months); T. 3 July 2013 (EK Hen), pp. 20, 23 (arrived in Phnom Penh, about four months after 17 April 1975 and found it very quiet); T. 13 June 2012 (OEUN Tan), pp. 37-38, 87, 89 (entered Phnom Penh two weeks after POL Pot did and found it empty); T. 6 June 2013 (Sydney SCHANBERG), p. 22 (*citing* S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, pp. 109-110, ERN (En) 00898317-18: 30 April: as they are evacuated, describes Monivong Boulevard and outskirts of Phnom Penh as deserted and, apart from some refugees still trudging along, there are no civilians, only Khmer Rouge soldiers); Aerial Photograph of Central Market, E3/3002, 27 April 1975.

[1552] IENG Sary Interview by Newsweek, E3/550, 8 September 1975, ERN (En) 00087603 ("Q. Is Phnom Penh still deserted of population? A. No, about 100,000 people have returned, and others are returning little by little. Schools, hospitals and factories have gradually resumed their activities. People can go back to Phnom Penh if they wish or they can stay in the countryside."). In June 1978, IENG Sary also claimed about 200,000 people lived in the capital and that people were satisfied with country life and they did not want to return to the city: *U.S., Vietnam Aided 3 Coups, Cambodia Says* (Los Angeles Times), E3/622, 14 June 1978.

[1553] Telegram to Ministry of Foreign Affairs, Subject: Situation in Phnom Penh – 25 April 1975, E3/2716, p. 1, ERN (En) 00517785, (Fr) 00391587 (notes the number of new residents returning to the city was extremely low, and only affected the city's outskirts; the city remained a ghost town); U.S. Embassy in Bangkok Telegram, Subject: The New Cambodia, E3/3006, 29 May 1975, para. 7, ERN (En) 00495566 (noting recent indications that people were slowly moving into Phnom Penh).

in the city during the DK regime,[1554] most, if not all, of those who returned to Phnom Penh were authorised to do so to support the regime's operational needs.[1555] Indeed, authorisation was required in order to re-enter Phnom Penh.[1556]

519. Most of those transferred did not return to Phnom Penh until after 6 January 1979.[1557]

[1554] T. 8 August 2012 (SUONG Sikoeun), p. 29 (estimated 20,000 people lived in Phnom Penh during the DK regime, mostly public servants and soldiers); *Defecting Khmer Rouge Helicopter Pilot Tells of Life in Phnom Penh* (The Times), E3/4063, 4 May 1976, ERN (En) 00005730 (Lieutenant PECH Lim Kuon reported that the population as at May 1976 was approximately 20,000, of which 8-12,000 were Khmer Rouge troops); Refugee Accounts, E3/4590, pp. 182, ERN (En) 00820501 (Phnom Penh was still deserted: there were hardly 20,000 people residing there), 206, ERN (En) 00820524 (Phnom Penh had no inhabitants, only troops, Angkar, embassies and a few former labourers. Currently, only 20,000 people live in Phnom Penh, all of whom came after the fall of Phnom Penh).

[1555] T. 15 August 2012 (SA Siek), pp. 103-104 (with the government's art unit, arrived at Olympic Stadium approximately 4 days after 17 April); T. 20 August 2012 (SA Siek), pp. 71-72, 74 (TIV Ol and HU Nim instructed SA Siek and the art department to delay entry into Phnom Penh by 3 days in order to allow the evacuees to leave); T. 3 July 2013 (EK Hen), pp. 20, 23-24, 73 (was sent back to Phnom Penh for one week, about four months after 17 April 1975, before being moved to Kampong Som); T. 20 May 2013 (IENG Phan), p. 47 (a Khmer Rouge soldier, asked permission to enter Phnom Penh and was so authorised about three weeks after the evacuation); T. 7 August 2012 (SUONG Sikoeun), pp. 46-48 (arrived in Phnom Penh in May 1975 and described the presence of certain people whom the Party kept to perform certain functions); T. 25 April 2013 (RUOS Suy), pp. 19, 88 (after the collapse of Phnom Penh and the evacuation of people, his unit was demobilized, and were asked to move to Phnom Penh where a new unit was created); U.S. Embassy Telegram, Subject: News about Phnom Penh and Kampong Cham Areas, E3/3003, October 1975, paras 4, ERN (En) 00495554 (reports the city and several kilometers of territory surrounding it on all sides constitute a special zone into which no one is permitted to enter without authorization), 6, ERN (En) 00495555 (noting presence of a few KC [Khmer Communist] troops in Phnom Penh); SREY Khem Interview Record, E3/546, 5 December 2007, p. 2, ERN (En) 00233581 (was asked to drive Chinese and Korean guests to Phnom Penh about one month after liberation); SONG Meng Interview Record, E3/5142, 12 December 2007, p. 3, ERN (En) 00223615 (was sent to Phnom Penh in 1976 because he knew construction); Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, pp. 32-33, ERN (En) 00524016-17 (reporting that according to Cambodia News Agency "AKI" and Chinese News Agency "Pékin Information" in July 1975 industrial and economic activities were resuming in Phnom Penh and that at Phnom Penh port, several thousand soldiers and dock workers work day and night transporting goods bound for various parts of the country).

[1556] U.S. Embassy in Bangkok Telegram, E3/3003, October 1975, para. 4, ERN (En) 00495554 (reports the city and several kilometres of territory surrounding it on all sides constitute a special zone into which no one is permitted to enter without authorization).

[1557] T. 17 December 2012 (SUON Kanil), p. 24 (saw a lot of people who had been moved in 1975 return home just before the fall of the Khmer Rouge in 1979); T. 3 July 2013 (EK Hen), p. 60 (since she left home in 1974 she was not able to return home until 1979; she did not know why she was not allowed to return, she just knew that she could not and she was not allowed to complain); T. 22 October 2012 (CHUM Sokha), p. 82 (the three days turned into three years, eight months and 20 days and they could never contest or ask why; they just listened to their orders, and kept moving from one location to another); T. 24 October 2012 (LAY Bony), p. 53 (returned to Phnom Penh in 1980); T. 7 August 2012 (SUONG Sikoeun), p. 43 (he never witnessed Phnom Penh's population return to the town); CHEA Marie Civil Party Application, E3/5085, 31 May 2009, p. 6, ERN (En) 00569493 (returned to Phnom Penh after the fall of POL Pot).

10.2.19. *Total Number of People Transferred*

520. There are no precise figures as to the total number of people who were transferred from Phnom Penh to the countryside on an allegedly temporary basis from 17 April 1975. Although inconclusive as to the number of evacuees who were finally moved, NUON Chea testified that prior to the evacuation of Phnom Penh the Zone Committee discussed how the Northwest Zone could receive 1.4 million evacuees, the Southwest Zone could take in more people, and the other zones could take in only limited numbers of Phnom Penh residents.[1558] Further, according to the U.S. State Department, Khmer Rouge communications exchanged between 18 and 23 April 1975 showed that the East Zone reportedly took in 500,000 to 600,000 people.[1559] While the Chamber is cautious as to the evidentiary value to be attached to the U.S. State Department's analysis, on the basis that the estimated population of Phnom Penh in April 1975 was 2 to 2.5 million[1560] and noting overwhelming and consistent oral testimony describing Phnom Penh as empty after the evacuation,[1561] it is satisfied that at least 2 million people were transferred from the capital to the countryside.

10.2.20. *Total Number of Deaths*

521. Equally there are no precise figures as to the total number of people who died during the evacuation from Phnom Penh and ensuing march to the countryside. Evidence before the Chamber suggests that anywhere between 2,000 and 20,000 people died during the evacuation and subsequent journey, demonstrating the impossibility of ascertaining the precise number of deaths that occurred.[1562] The Chamber notes that at the time of its expulsion the population of Phnom Penh had

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[1558] The Chamber gives preference to the Khmer transcript, being the language in which the Accused testified: T. 13 December 2011 (NUON Chea), pp. 30-31 (English), p. 19 (Khmer).

[1559] White House Memorandum to Secretary Kissinger, Subject: Additional Information Items, E3/3007, 2 May 1975, ERN (En) 00495478.

[1560] *See* Section 3: Historical Background, para. 157.

[1561] *See* Section 10: Movement of the Population (Phase One), para. 518.

[1562] *What We Are Doing Has Never Been Done Before* (Der Spiegel), 1977, ERN (En) 00185419 (in a 1977 interview IENG Sary stated that the first months of the liberation were quite tough and 2,000 to 3,000 people died during the evacuation); Book by B. KIERNAN: *Pol Pot Regime – Race, Power and Genocide in Cambodia under the Khmer Rouge*, E3/1593, p. 48, ERN (En) 00678519 (empirical study concluded 10,600 of 2 million people likely died); T. 6 May 2013 (Expert Philip SHORT), pp. 39-40 (noted there have been various estimates: Ben Kiernan gave 10,000; another estimate was 35,000; IENG Sary at one point spoke of two to 3,000); *See also*, Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, p. 275, ERN (En) 00396483, (Fr) 00639810 (estimating a total of 20,000 deaths during the evacuation of Phnom Penh).

experienced a long siege characterised by food shortages,[1563] such that the population was severely weakened. In this weakened condition, the population was forced to march to rural areas during the hottest time of the year and in the almost complete absence of food, water, medical care, accommodation or transportation.[1564] Having regard to the totality of the evidence before the Trial Chamber describing the deaths that occurred during the evacuation due to killings, starvation and exhaustion,[1565] the Chamber is satisfied that at least several thousand people died during the transfer of the population from Phnom Penh to the countryside. Among the victims were babies, young children, sick and elderly people.[1566]

10.2.21. *Effect on Evacuees*

522. In addition to physical trauma endured during their exodus, many Cambodians continue to suffer from anxiety as a result of having experienced great loss.[1567] For people who lost loved ones, as well as their property, belongings and their homes, the trauma may have been compounded; such people are prone to loneliness and experience a loss of motivation in life.[1568] Denise AFFONÇO described how her life "switched to hell" overnight as she and other transferees were chased from their houses and their properties were expropriated,[1569] while NOU Hoan still feels unsettled about the loss of his property, including family photos and his children's birth certificates and described the loss he feels as unimaginable.[1570]

523. Victims who were transferred, lost their homes, lost contact with family members, their surroundings, and their places of worship experienced a diminished sense of "physical and spiritual security".[1571] In particular, children who were displaced and thus taken away from their familiar surroundings lost the opportunity to

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[1563] *See* Section 3: Historical Background, para. 159; Section 10: Movement of the Population (Phase One), para. 537.
[1564] *See* Section 10: Movement of the Population (Phase One), paras 491-492, 495-496.
[1565] *See* Section 10: Movement of the Population (Phase One), paras 474, 486-487, 490-492, 497-498, 503, 507, 511, 513, 515.
[1566] *See* Section 10: Movement of the Population (Phase One), paras 497-498.
[1567] T. 5 June 2013 (CHHIM Sotheara), p. 71.
[1568] T. 5 June 2013 (CHHIM Sotheara), pp. 71, 83.
[1569] T. 13 December 2012 (Denise AFFONÇO), pp. 103-105.
[1570] T. 30 May 2013 (NOU Hoan), pp. 11-13.
[1571] T. 5 June 2013 (CHHIM Sotheara), pp. 93-94.

interact with others, as well as the ability to plan for the future; they also faced difficulties settling into new and hostile surroundings.[1572]

524. Witnessing or hearing traumatic events also gave rise to mental and psychological disorders.[1573] For instance, Civil Party MOM Sam Ouern suffers from depression which she attributes to the loss of her children and husband as well as the trauma of seeing corpses during her forced exile from Phnom Penh.[1574] She is still terrified and traumatised from walking along roads littered with corpses after leaving Phnom Penh.[1575] Denise AFFONÇO also recounted how thirty years after the regime she is still plagued by nightmares, haunted by her experiences and does not wish to set foot in Cambodia.[1576]

10.3. Policy and Justifications for the Evacuation

525. The NUON Chea and KHIEU Sampan Defence teams respectively contend that the alleged 'forced transfer' was in fact a legitimate population resettlement policy which sought to revitalise the Cambodian economy and ease the dire humanitarian and economic conditions prevailing in Phnom Penh and in Cambodia by 1975.[1577] The KHIEU Samphan Defence further contends that military necessity justified the evacuation in view of the uncertainty as to America's actions and the resistance posed by pockets of LON Nol soldiers.[1578]

10.3.1. *Security Against Enemies and Weakening the Enemy*

526. The CPK's leaders claimed that the evacuation of Phnom Penh was necessary to protect the new regime against the militaries of America and Vietnam, both of which were perceived at the time as enemies with competing interests.[1579] In public

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[1572] T. 5 June 2013 (CHHIM Sotheara), pp. 80-82.
[1573] T. 5 June 2013 (CHHIM Sotheara), pp. 95-96.
[1574] T. 6 November 2012 (MOM Sam Oeurn), p. 67 (and a violent incident she observed at Khsach Tonlea Island).
[1575] T. 6 November 2012 (MOM Sam Oeurn), p. 68.
[1576] T. 13 December 2012 (Denise AFFONÇO), p. 106.
[1577] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 240-258; [KHIEU Samphan's] *Conclusions finale*, E295/6/4, 26 September 2013, paras 34-36, 44-53.
[1578] [KHIEU Samphan's] *Conclusions finale*, E295/6/4, 26 September 2013, paras 34-43.
[1579] In particular, the CPK considered America as an imperialist enemy insofar as they backed the LON Nol Khmer Republic regime and had supported South Vietnam in their fight against North Vietnamese communists. Moreover, the CPK considered Vietnam, although communist, a rival and

interviews, IENG Sary stated that the CPK leadership had uncovered American plans to sow confusion and undermine the new regime after the Khmer Rouge victory, and Phnom Penh was evacuated to thwart this plan.[1580] In particular, NUON Chea claimed that after the Khmer Rouge took control of Phnom Penh on 17 April, the CPK leadership feared that America would resume its bombing campaign[1581] and the possibility that any ensuing internal instability caused would create an unwanted opportunity for neighbouring Vietnam, with its expansionist tendencies, to intervene in Cambodia's affairs.[1582] The Central Committee feared that Vietnamese forces had

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threat insofar as they purportedly sought to extend their own communist interests in Cambodia. *See* Section 3: Historical Background, paras 80-95. *See also*, T. 5 December 2011 (NUON Chea), pp. 45-49 (outlining that in the 1950's the Cambodian communist party was controlled by the Vietnamese who pursued their own interests), 50-53 (if Cambodia did not try to protect itself, Vietnam would take it over), 65-69 (it was the intention of the Vietnamese Labor Party to exercise full control over Cambodian territory); POL Pot's Interview with Yugoslav Journalists (Journal of Contemporary Asia), E3/5713, 17 March 1978, p. 4, ERN (En) 00750100 (stating there was the problem of defending the country against the plan of US imperialism and its lackeys); KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, pp. 3-4, ERN (En) 00000927-28 (POL Pot wanted to be free from the CIA and Vietnam), 10, ERN (En) 00000934 (America and Vietnam were the regime's enemies).

[1580] IENG Sary Interview by Newsweek, E3/550, 8 September 1975, ERN (En) 00087603 (noted that one of the reasons for the evacuation was the discovery of a document detailing a secret political military plan by the US Central Intelligence Agency and the defeated LON Nol regime to spread confusion after the Khmer Rouge victory); *Cambodian Defends '75 Closing of Nation to Prevent a Civil War* (New York Times), E3/616, 28 July 1978 (IENG Sary stated that the revolutionaries considered evacuation a necessary defense to guard against a city full of agents, ammunition dumps and conspiracies to undermine the new regime); *A Closer Look at the Mayaguez Incident* (Far Eastern Economic Review), E3/647, 3 October 1975 (IENG Sary defended evacuation as part of a Khmer Rouge counter-strategy to thwart a three-point American plan to destabilise the new government); *Interview with Deputy Prime Minister of Cambodia, Ieng Sary: Cambodia Cannot Remain Isolated* (Le Quotidien), E3/572, 19 September 1975, p. 1, ERN (En) 00494421 (the aim was, inter alia, to thwart enemy plans).

[1581] See Section 3: Historical Background, paras 153-156.

[1582] T. 13 December 2011 (NUON Chea), p. 30 (after the liberation of Phnom Penh it was not clear whether Americans would continue to be involved); T. 6 June 2013 (NUON Chea), pp. 37-41 (during Sydney SCHANBERG testimony, NUON Chea queried whether the Americans would bomb after the Khmer Rouge soldiers came to control the city). *See also*, NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30 July 1978, ERN (En) 00762402, 00762404 (he stated that it was widely known that the USA, working jointly with the KGB and Vietnam, planned to seize power from them six months after liberation, but the CPK leadership smashed their plan by evacuating the cities after liberation and forcing the CIA, KGB and Vietnamese agents to leave for the countryside and thus unable to implement the plan); *Cambodian Defends '75 Closing of Nation to Prevent a Civil War* (New York Times), E3/624, 29 July 1978 (reporting that Cambodia's Foreign Minister, Ieng Sary, stated that the closing of his country and evacuation of Phnom Penh after the communists took power in 1975 had been necessary to avoid a civil war, ensuing deaths and the possibility of intervention by their neighbours); *Sary: Empty Cities a Temporary Move* (Bangkok Post), E3/3322, 31 July 1978 (Ieng Sary defended evacuation as a measure intended to avoid a new civil war which could have led to the setting up of a puppet government or could have brought on Vietnamese or Thai military intervention); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 12, ERN (En) 00170703 (SAUV Kim Hong statement noted that the evacuation of Phnom Penh had the aim of preventing Cambodia from becoming a Vietnamese satellite).

already infiltrated Phnom Penh and considered that it would be disastrous to have fighting in Phnom Penh as there would be many casualties.[1583] KHIEU Samphan also cited the risk of CIA agents allying with LON Nol soldiers and Vietnamese communists to thwart the Khmer Rouge, and the risk of a Vietnamese invasion.[1584]

527. American bombings in Cambodia ended on 15 August 1973 and other incidents of bombing in the lead up to April 1975 were more likely attributable operations conduct by to the remaining Khmer Republic air force.[1585] With the U.S. Congress' 10 May 1973 vote terminating all funding for bombing operations in the region[1586], and the developments in Vietnam where U.S. forces were definitively pulling out due to the Paris Peace Accords of January 1973[1587], the political and military situation that prevailed during the devastating U.S. bombing raids in Cambodia changed. This new context made it improbable that the American bombing campaign in Cambodia would continue following the fall of Phnom Penh.[1588]

528. There was an isolated incident of post-1973 American bombing in May 1975 when, upon the order of the U.S. President, an oil refinery and the port of Sihanoukville (previously) Kampong Som were bombed in response to the capture of the U.S. merchant ship *Mayaguez* by Khmer Rouge forces.[1589] This incident could not

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[1583] T. 30 January 2012 (NUON Chea), pp. 18-20; NUON Chea Interview by Japanese Journalist, E3/26, undated, pp. 9-10, ERN (En) 00329512-13; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30 July 1978, p. 30, ERN (En) 00762402. *See also, Former Cambodian Deputy Prime Min IENG Sary concedes*… (New York Times), E3/675, 29 February 1980 (IENG Sary claimed that the decision to evacuate the cities was prompted by a fear that Vietnam would infiltrate the cities and kill government leaders).

[1584] KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 8, ERN (En) 00156748; Book by KHIEU S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, October 2007, ERN (En) 00498300. *See also,* SALOT Ban Interview Record, E3/413, 22 July 2009, p. 2, ERN (En) 00361009 (he heard that American Intelligence intended to hide thousands of their spies and, if not managed properly, in a week time they could launch an attack and seize back. So, people had to be evacuated and sent to stay in the rural areas).

[1585] *See* Section 3: Historical Background, paras 153-156.

[1586] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, 2004, p. 52, ERN (En) 00103749 ("[…] the US Congress suspended the war budget and, by the middle of August 1973, demanded that the United States stop the bombing.")

[1587] *See* Section 3: Historical Background, paras 153-156.

[1588] *KHIEU Samphan Appeals to Phnom Penh Citizens to Join NUFC* (in FBIS Collection), E3/118, 14 April 1975, ERN (En) 00166948 (mentioning that "the U.S imperialists […] on 12 April brought in 50 helicopters […] to evacuate their colleagues from Phnom Penh").

[1589] U.S. National Security Council Meeting Minutes, E3/3446, 12 May 1975, ERN (En) 00443414 (referring to this as an act of piracy); White House Memorandum of Conversation, E3/3449, 14 May 1975, ERN (En) 00443311 (noting orders for aircraft to attack selected military targets at Kampong Som, where Cambodian navy was situated, and Ream, where there is an airfield); T. 13 June 2013 (SIM Hao), pp. 6-8 (witnessed the American air raid of warehouses at Kampong Som in late May 1975

have been foreseen in the lead up to 17 April 1975, was not part of the earlier American bombing campaigns, and does not therefore lend support to NUON Chea's argument that further American bombings were feared. Moreover, in view of the fact that the CPK's own leadership came to Phnom Penh in the days following 17 April 1975[1590] and based themselves in prominent locations apparently without any significant attempt to take precautions against aerial bombing,[1591] the Chamber does not find it credible that the CPK feared imminent bombing in April 1975 that justified Phnom Penh's evacuation.[1592] Even were the Chamber prepared to accept that the leadership believed there was a possibility of imminent bombing, no explanation is offered as to why orders to immediately evacuate did not extend to foreigners,[1593] who were not finally evacuated until two to three weeks later.[1594]

529. In a speech to the Communist Workers' Party of Denmark in 1978, NUON Chea acknowledged that the purported American plan was expected to take place six months after the taking of Phnom Penh.[1595] This timeline undermines any perceived

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and testified that there were no casualties, although others reported some injuries); *Ship Seizure Order Denied by Cambodia* (Washington Post), E3/646, 8 September 1975.

[1590] T. 26 July 2012 (ROCHOEM Ton), pp. 62-63 (NUON Chea and KHIEU Samphan arrived in Phnom Penh at a later date with NUON Chea possibly arriving on 21 April 1975; IENG Sary arrived maybe a week or more after the capture); KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 2, ERN (En) 00156742 (he arrived around 7 to 10 days later), 5, ERN (En) 00156745 (NUON Chea and POL Pot brought him from Oudong to Phnom Penh and they stayed at the buildings of the railway station for around a month before going to the Silver Pagoda and then to the Bassac waterfront); *The Victors: What Now?* (Newsweek), E3/3721, 28 April 1975, ERN (En) 00002599 (reporting on KHIEU Samphan's return to Phnom Penh the previous week); French Ministry of Foreign Affairs Telegram, E3/2710, 21 April 1975, ERN (En) 00494414 (Arnaud reports that Sihanouk informed him that the GRUNC vice-president had either already arrived in Phnom Penh or was in the vicinity); *See also, NUFC Radio on Phnom Penh Liberation, Occupation of U.S. Embassy* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166977 (we occupied the Chamkar Mon Palace and area on 16 April), (En) 00166988 (on 17 April).

[1591] *See* Section 10: Movement of the Population (Phase One), para. 463, fn. 1369.

[1592] In this respect, *see also*, T. 23 July 2012 (Expert David CHANDLER), p. 49 (the Khmer Rouge may have known that the Americans had gone and were not going to return); T. 6 May 2013 (Expert Philip SHORT), pp. 23-24 (the explanation of fleeing American bombing was knowingly false; the Khmer Rouge knew there was no possibility of bombing).

[1593] Telegram to Ministry of Foreign Affairs, Subject: Situation in Phnom Penh - 14 h, E3/2693, 18 April 1975, para. 1, ERN (En) 00486887 (Dyrac reported a meeting with an anonymous 3 person delegation from the City Committee, who advised that the general evacuation of the city deemed to be necessary does not apply to embassies and especially not to French nationals).

[1594] *See* Section 10: Movement of the Population (Phase One), para. 480. Although in some instances foreigners living in Phnom Penh were also evacuated, for example, Denise AFFONÇO.

[1595] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30 July 1978, ERN (En) 00762402, 00762404 (he stated it was widely known that the USA, working jointly with the KGB and Vietnam, planned to seize power from them six months after liberation, but the CPK leadership smashed their plan by evacuating the cities after liberation and forcing the CIA, KGB and Vietnamese agents to leave for the countryside and thus unable to implement the plan).

need for urgent evacuation at the time of entering Phnom Penh on 17 April 1975. Nor does it correspond with the announcements that the evacuation of Phnom-Penh would be temporary and limited to three days.

530. The testimony of SUM Chea, a Khmer Rouge soldier involved in evacuating the population from Phnom Penh, further undermines the Defence's claim that the leadership believed there was an immediate necessity for evacuation. The Chamber recalls that evacuees were told they were being evacuated in order to protect them against further anticipated aerial bombardments by the United States of America, as well as for public safety as Angkar needed to 'sweep' or 'clean' the remaining enemies from the city.[1596] Tellingly, SUM Chea testified that his division was instructed to deceive Phnom Penh's residents by telling them that they needed to evacuate because fighting would erupt, they would be bombed and everyone would die.[1597] This is a clear indication that the Khmer Rouge used the idea of American bombing as a pretext for its actions. The NUON Chea Defence accepts that no bombs fell on Phnom Penh after 17 April 1975.[1598]

531. Having guarded the April 1975 meeting where CPK leaders discussed the plan to evacuate Phnom Penh, PHY Phuon confirmed that the meeting's participants considered that it would be difficult to control the people in Phnom Penh if they were not evacuated from the city, as the CPK's prior experiences showed that provincial towns that had been liberated were evacuated in order to make it easier for the cadres to manage them.[1599] As subsequently acknowledged, by evacuating Phnom Penh, the

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[1596] *See* Section 10: Movement of the Population (Phase One), paras 468-469.

[1597] T. 5 November 2012 (SUM Chea), pp. 26, 49 (a Khmer Rouge soldier involved in evacuating the population. SUM Chea testified that his division was instructed to deceive Phnom Penh's residents by telling them that they needed to evacuate because fighting would explode, they would be bombed and everyone would die). *See also*, T. 10 January 2013 (UNG Ren), pp. 51, 54 (a Khmer Rouge soldier, learned that one reason the commanders gave the evacuation order was because they feared bombardments); LAY Ien Interview Record, E3/470, 4 March 2008, p. 3, ERN (En) 00205008 (a Khmer Rouge soldier, stated Chairman Chheang ordered the soldiers of his division tell people to leave the city because of fear the Americans would come to bomb).

[1598] T. 22 November 2012, pp. 70-72, 75-77 (MEAS Saran) (Counsel's oral submissions).

[1599] T. 30 July 2012 (ROCHOEM Ton), pp. 67-68 (once they liberated any zone, then they would evacuate and relocate the people. It would be easier from the management perspective, because the element was not that complicated); T. 26 July 2012 (ROCHOEM Ton), pp. 13 (he was able to listen to the meeting because he was a guard during this meeting), 14. *See also*, T. 19 July 2012 (Expert David CHANDLER), pp. 62-63; T. 20 July 2012 (Expert David CHANDLER), pp. 101-102 (from an historical point of view the policy of evacuating captured cities had some precedents in Asia and ensured that an invading power would not encounter an opposing presence which could form an

Khmer Rouge smashed the Americans' "dark maneuvers and … criminal plans"; after taking control on 17 April 1975 the Khmer Rouge extolled that "none were left to annoy us" and "the imperialists had no forces to attack our people from the inside."[1600]

532. Indeed, three months after the evacuation operation, the CPK leadership reasoned that had the population of Phnom Penh not been evacuated

> the enemy might have attacked and pounced on us from behind and smashed our revolutionary forces to pieces; or, at least, the enemy would have been able to burrow inside our revolutionary stance, cause chaos in the revolutionary ranks, break up the Party's discipline and solidarity making the revolutionary stance fade away.[1601]

533. Further, in 1977 POL Pot confirmed that "[w]e had resolved to evacuate the towns as early as February 1975, because it would otherwise have been impossible to smash the spies, saboteurs and trouble-makers."[1602]

534. Having regard to the early arrival of the CPK leadership in Phnom Penh after the evacuation, NUON Chea's speech to the Communist Workers' Party of Denmark in 1978 and the testimony of SUM Chea, the Chamber is not satisfied that the leadership believed that the claimed threat existed at the time. The Chamber therefore concludes that the decision to evacuate was not motivated by a desire to protect the people of Phnom Penh from U.S. bombing. Rather, the only reasonable conclusion is that the leadership decided to transfer the population of Phnom Penh, based in part on

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opposition movement); Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, p. 287, ERN (En) 00396495 (one of the reasons for the evacuation was to remove Sihanouk's support base).

[1600] *Revolutionary Youth*, E3/749, August 1975, p. 3, ERN (En) 00532683 (concerning the need to smash the American's "dark maneuvers and … criminal plans"); *Revolutionary Flag*, E3/759, April 1976, p. 5, ERN (En) 00517853 (recalling how the imperialists were expelled after the 17 April 1975 liberation, such that "none were left to annoy us" and "the imperialists had no forces to attack our people from the inside").

[1601] *Revolutionary Male and Female Youths*, E169/4.1.1.1, July 1975, ERN (En) 00815133.

[1602] Telegram to French Ministry of Foreign Affairs, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, ERN (En) 00751832 (relaying that POL Pot recounted they had resolved to evacuate the towns as early as February 1975, because it would otherwise have been impossible to smash the spies, saboteurs and trouble-makers; we dispersed them in the cooperatives under our control); *See also, POL Pot's Press Conference in Beijing* (in SWB Collection), E3/2072, 4 October 1977, ERN (En) 00080549 (in safeguarding the fruits of the revolution, one of the important factors is the evacuation of city residents to the countryside. This was decided before victory was won, that is, in February 1975, because we knew that before the smashing of all sorts of enemy spy organizations, our strength was not strong enough to defend the revolutionary regime); T. 7 February 2013 (PIN Yathay), p. 53. *See also*, Section 3: Historical Background, para. 118.

its earlier practices and experience of evacuating other areas,[1603] and for military, economic and ideological reasons, to allow the leadership better control of the people and to prevent enemies from destabilising CPK forces.

10.3.2. *Food Shortages and Conditions in Phnom Penh on 17 April 1975*

535. The NUON Chea Defence submitted that upon entering Phnom Penh, the Khmer Rouge found it on the verge of exhausting its food stocks, with only 6 days' worth of rice left in the capital.[1604] The NUON Chea Defence submitted accordingly that the food crisis created the urgent need for the evacuation, although it conceded that the city's population would have been evacuated and moved into cooperatives irrespective of the food crisis.[1605]

536. IENG Sary also referred to the shortage of food, the difficulty of supplying rice to people in the city, and the need to increase agricultural production, while KHIEU Samphan stated that there was no alternative to the policy of evacuating people to cooperatives as there were three million people in Phnom Penh without food.[1606]

[1603] *See* Section 3: Historical Background, paras 104-112; Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 170; Section 10: Movement of the Population (Phase One), paras 541-542.

[1604] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 241, 251.

[1605] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 241, 251; T. 24 October 2013 (NUON Chea Closing Statements), pp. 79-80.

[1606] French Ministry of Foreign Affairs Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 26 January 1978, ERN (En) 00389177-78; IENG Sary Interview by Newsweek, E3/550, 8 September 1975, ERN (En) 00087603 (announcing that the food shortage was one reason for the evacuation as they thought there were 2 million people in Phnom Penh but discovered 3 million when they entered. While the Americans had previously delivered 30 to 40 thousand tons of food per month to Phnom Penh, the population now had to go and get the food as the leadership did not have sufficient transport to bring it to the capital; noting also that the leadership had to provide food for the population while preserving its independence and dignity and without asking for help from any country); *Interview with Deputy Prime Minister of Cambodia, Ieng Sary: Cambodia Cannot Remain Isolated* (Le Quotidien), E3/572, 19 September 1975, p. 1, ERN (En) 00494421 (upon discovering that they had to feed about three million people, IENG Sary stated "We simply informed the residents that if they wished to continue living and to find sufficient, though not abundant food, they could relocate to the countryside"); *Cambodian Defends '75 Closing of Nation to Prevent a Civil War* (New York Times), 28 July 1978, E3/616, ERN (En) 00419962 (difficulty of supplying rice to the city); KHIEU Samphan Interview by HENG Reaksmei, E3/586, undated, p. 2, ERN (En) 00659110 (noting starvation in Cambodia and that 15,000 children had already died by January 1975). *See also*, Interview with KHIEU Samphan and NUON Chea – 9-11 June 2006, E3/122, pp. 3-4, ERN (En) 00000927-28 (due to the bombings people moved to Phnom Penh, by 1975 there were 3 million people in the capital and they were starving; POL Pot decided to evacuate people to the countryside and to live in cooperatives so that they would share each other's food); POL Pot's Interview with Yugoslav Journalists (Journal of Contemporary Asia), E3/5713, 17 March 1978, p. 4, ERN (En) 00750100 (the CPK leaders considered it would be impossible to feed millions of townspeople as it was beyond their capability); T. 7 June

537. The Chamber notes that there was an influx of refugees from the countryside into Phnom Penh between 1970 and 1975, that most people experienced severe food shortages and that living conditions in general in Phnom Penh during this period were dire.[1607] Furthermore, after the Khmer Rouge captured the Mekong in February 1975 and prevented provisions from entering the capital,[1608] the food situation in Phnom Penh deteriorated further.[1609]

538. While it is difficult to estimate how much longer existing food stocks in Phnom Penh would have sustained the population around 17 April 1975,[1610] it is clear that the Khmer Rouge forces at the time had control of all transportation routes including the Mekong river and port installations in Kompong Som which could have been used to allow supplies to come in.[1611] In addition, although damaged, Pochentong Airport was

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2013 (Sydney SCHANBERG), p. 10 (citing S. Schanberg: *Cambodia Diary 1975*, E236/1/4/3.1, p. 75, ERN (En) 00898283, noting people hypothesised that the evacuation was a way to avoid the impossible task of feeding a refugee-swollen city of over 2 million people at a time of extreme rice shortage).

[1607] *See* Section 3: Historical Background, para. 157.

[1608] T. 5 June 2013 (Sydney SCHANBERG), pp. 16-19; T. 6 June 2013 (Sydney SCHANBERG), pp. 56-59; T. 7 June 2013 (Sydney SCHANBERG), p. 12. *See also, Khieu Samphan 14 Jan Message to CPNLAF Fighters* (in FBIS Collection), E3/30, 15 January 1975, ERN (En) 00166709-10 (Khieu Samphan issued a statement on 14 January 1975 announcing that the "sole route for the transportation of rice and other food, fuel oil and munitions from South Vietnam to feed the clique of traitor LON Nol and associates" was "completely blocked"); *Khieu Samphan Issues Appeal to Compatriots, Monks*, (in FBIS Collection), E3/30, 22 January 1975, ERN (En) 00166721 (the Mekong route, which is the sole vital transportation route left to the enemy for transporting supplies to Phnom Penh, is now completely cut; thus, in Phnom Penh and other enemy-held provincial capitals, the shortage of rice, which has always been extremely scarce, will become even more acute in the future); *Commentary Hails CPNLAF Victories Around Phnom Penh* (in FBIS Collection), E3/488, 19 February 1975, ERN (En) 00166762 (since the beginning of February no enemy river convoy has been able to sail to the Mekong River; thus the Mekong, blocked in January and early February, will be cut forever; consequently the deteriorating situation in Phnom Penh will become even worse; rice, fuel, drinking water and electricity are running short and will run out; it has become impossible to live in Phnom Penh); *KHIEU Samphan Congratulates CPNLAF on Neak Luong Victories* (in FBIS Collection), E3/118, 5 April 1975, ERN (En) 00166925 (announcing that since 1 January, on the lower Mekong and Route 1 battlefronts the CPNLAF has launched vigorous attacks against the enemy, liberating parts of the Mekong River and destroying all enemy ship convoys; from now on, CPNLAF is the complete master of the over 100km stretch of the Mekong River between Phnom Penh and Tan Chau, this is one of our greatest victories).

[1609] *See* Section 3: Historical Background, para. 159.

[1610] T. 10 April 2013 (François PONCHAUD), p. 25 (based on his own experience providing food for hundreds of thousands of refugees with Caritas, PONCHAUD considered it would have been possible to feed the population of Phnom Penh for another two months; we reserved some rice because we were concerned that the Khmer Rouge would cut off the Mekong River and then we could not have more rice); USAID Report: *Cambodia Termination Report Vol. 1*, Vol. 1, E3/4178, September 1975, ERN (En) 00291339 (as of mid-April GKR owned rice stocks to feed the estimated two to three million people who lived in Phnom Penh and the enclaves or served in the FANK, known as the 'rice deficit population', were about 65,000 metric tons).

[1611] Sydney SCHANBERG and Expert Philip SHORT suggest that had the Khmer Rouge intended to feed the population of Phnom Penh, it would have sufficed for the Khmer Rouge to open the Mekong,

functional as evidenced by the fact that; it received several planes from China in May 1975.[1612] Nevertheless, the leadership refused to accept any humanitarian assistance from those it regarded as enemies, applying a stance of 'independence' and mastery decided by the Party.[1613] Although after the fall of Phnom Penh, the Kampuchean authorities, stated that they were willing to accept foreign aid provided it was lent unfettered by conditions,[1614] this did nothing to alleviate conditions immediately after 17 April 1975.

539. Instead, the leadership considered it preferable to expel the city's population with little to no prior planning for the welfare of the evacuees during the journey, rather than to implement a staged evacuation, an option which was raised but rejected.[1615] The contention that the transportation of rice to the city posed difficulties or that a process of identifying residents suitable for first evacuation presented such a

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their primary supply source, or to ask for rice to be sent in: T. 7 June 2013 (Sydney SCHANBERG), pp. 11-12; T. 6 May 2013 (Expert Philip SHORT), p. 31.

[1612] French Ministry of Foreign Affairs Telegram, Subject: Chinese Aircraft in Cambodia, E3/4139, 23 May 1975, ERN (En) 00648633 (reporting on the arrival of Chinese Boeings at Pochentong Airport carrying, at GRUNK request, medicines and Khmer VIPs); *Radio Reports Repair Work on Communication Lines* (in FBIS Collection), 7 May 1975, ERN (En) 00167046; *Restoration Work Underway at Pochentong Airport* (in FBIS Collection), 9 May 1975, ERN (En) 00167058.

[1613] T. 9 April 2013 (François PONCHAUD), p. 79 (during the same period, the Khmer Rouge did not welcome airplanes transporting medicine from Bangkok, claiming the country did not need it); IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 1, ERN (En) 00342500 (IENG Sary stated at that time we thought international aid always came with conditions; the Chinese supplied us without conditions); Report by L. TRIVIÈRE: *China and Cambodia*, E3/482, November 1975, p. 28, ERN (En) 00524012 (IENG Sary said they needed to provide food for the population while preserving their independence and dignity and without begging for aid from any country); *See also*, Telegram to the Ministry of Foreign Affairs, E3/2720, 28 April 1975, p. 2, ERN (En) 00517789 (Richer, reporting on a conversation with Mr Sien An, the GRUNK Ambassador, to land a plane to evacuate those at the French Embassy, "— Foreign assistance? Allowing a Transall aircraft to land would amount to a privilege, and other countries would criticize GRUNK for it. In short, it was the usual slippery slope: we have nothing, we can ask for nothing from anyone.").

[1614] Standing Committee Minutes, E3/182, 9 October 1975, ERN (En) 00183405 (reporting that aid would be accepted only if it did not impact the Cambodia's stance of independence and mastery); Standing Committee Minutes, E3/230, 22 February 1976, ERN (En) 00182546-47 (para. 4 states "Yugoslavian aid, three million dollars: Propose buying one million dollars of medicines[...]"; para. 7 describes the distribution of Chinese aid rice); Standing Committee Minutes, E3/238, 28 February 1976, ERN (En) 00424112 (reports that Kampuchea can receive $5 million and $4 million aid from Sweden and Yugoslavia respectively, that is claimed to be unconditional); Standing Committee Minutes, E3/223, 17 May 1976, pp. 2, 5 ERN (En) 00182709, 00182712 (concerning receiving aid from three Eastern-bloc countries – East Germany, Hungary and Czechoslovakia - concludes "we neither accept nor deny" as "it's better for us to receive such assistance on an individual country basis.").

[1615] IENG Sary Interview by Stephen Heder, E3/89, 17 December 1996, p. 6, ERN (En) 00417604 (IENG Sary stated that some had advocated first identifying those who had come from outside the city for initial evacuation because they had homes in the countryside).

logistical feat as to be impossible,[1616] is implausible when contrasted with the alternative option of forcibly relocating the entire population of Phnom Penh with little to no planning for their welfare during the course of their journey, undoubtedly a colossal logistical feat if done properly. In this respect the Chamber agrees with the remarks of Expert Phillip SHORT that, had the CPK chosen to do so, it would be easier to feed a static population rather than millions of people streaming out of the city in all directions.[1617]

540. In view of the admission of the NUON Chea Defence that Phnom Penh would have been evacuated regardless, the implausibility of the claim that it was easier to evacuate the population to the country rather than bring food to the city or progressively stage the evacuation, and for the reasons discussed below, the Chamber does not consider the critical food situation to be the principal reason for the immediate and entire evacuation of the population of Phnom Penh. Furthermore, the Chamber does not accept the submission that NUON Chea and KHIEU Samphan were unprepared for the numbers living in Phnom Penh when it was taken by the Khmer Rouge on 17 April and were therefore forced to support the evacuation of the city in order to feed the population.

10.3.3. ***Pre-established Plan and Generalised Policy***

541. The evacuation of Phnom Penh must be understood in light of a broader CPK policy, adopted at a series of meetings starting in June 1974, which consisted of moving the population of *all* captured cities and towns to the countryside. Other urban centres endured exactly the same fate as Phnom Penh when they were taken by the Khmer Rouge and it is remarkable that the evacuation of a capital city of the size of Phnom Penh, which was unprecedented, was conducted following the same pattern of conduct.[1618] Yet, the justification of having to protect the population from aerial bombings was limited to the case of Phnom Penh where it was harder to move the

[1616] *See* NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 258 (that the identification process was impossible); *Cambodian Defends '75 Closing of Nation to Prevent a Civil War* (New York Times), E3/616, 28 July 1978, (IENG Sary cites the difficulty of supplying rice to the city); NUON Chea Interview by Japanese Journalist, E3/26, undated, p. 9, ERN (En) 00329512 (no means to transport rice).
[1617] T. 6 May 2013 (Expert Philip SHORT), p. 31.
[1618] *See* Section 14: Joint Criminal Enterprise, paras 787-790.

population due to its sheer size and status as the capital city. The CPK required an additional impetus to motivate the population to leave in order to ensure the success of its transfer. If fear of U.S. aerial bombings was indeed the reason for the evacuation of Phnom Penh, one would have expected that such rationale would have prevailed throughout Cambodia's urban centres, but no such claim was ever alleged during the evacuation of other cities, including some of strategic importance.

542. The Chamber has found that the evacuation of towns after the Khmer Rouge captured them was an established policy even prior to April 1975.[1619] Moreover, on and after 17 April 1975 people were also displaced from various provincial towns throughout Cambodia.[1620] The evacuation of Phnom Penh was no exception insofar as it was carried out pursuant to a predetermined military, economic and ideological strategy whereby all cities that were captured and 'liberated' were subsequently evacuated.[1621] Indeed, the decision to evacuate Phnom Penh was developed through meetings starting from June 1974, well before the Khmer Rouge took control of

[1619] *See* Section 3: Historical Background, paras 104-112.
[1620] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 170.
[1621] T. 11 January 2013 (CHHAOM Se), pp. 59, 63 (there always were plans to evacuate people after an area was won to avoid incidents of fighting in a newly seized location); T. 8 April 2013 (CHHAOM Se), pp. 34, 66 (orders to evacuate Phnom Penh were blanket orders carried out in every battlefield as every city had to be evacuated; the evacuation plans were established before the evacuation was carried out). *See also*, Laurence PICQ Interview Record, E3/87, 31 October 2008, ERN (En) 00283112 (the evacuation of towns was done as the liberation progressed. Each time a city was captured, its inhabitants were evacuated to the countryside in order to be cleansed and purged of their town habits. IENG Sary continued to rationalize the evacuation of Phnom Penh until the very end); Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, pp. 36, ERN (En) 00170727 (a man from tambon 13 (Takeo) in Southwest, and a party supporter, considered that the plan to evacuate Phnom Penh was part of a general, long standing policy because that was what "we" had always done when "we" liberated an enemy zone. People were evacuated from zones that were liberated because "we" were afraid that we would be unable to hold these areas against counterattack and thus unable to maintain peoples' security. Moreover, people were a source of labour power and if people could be gathered up, then "we" would have forces with which to defeat the enemy. He understood that the plan to evacuate Phnom Penh had two purposes (1) to maintain the security of our new regime and also (2) to solve the problem of their standard of 1iving), 57, ERN (En) 00170748 (LONH aka LORN, member of the Kompong Som city Standing Committee stated that if Phnom Penh had been captured in 1974 it would still have been evacuated as this had been a long-standing plan. The slogan was 'Dry Up the People from the Enemy'); [KHIEU Samphan's] *Conclusions finale*, E295/6/4, 26 September 2013, para. 41 (submitting that from 1970 to 1975 the military practice was to evacuate populations from conquered zones in order to prevent the enemy from retaking it).

Phnom Penh,[1622] and evidence indicates that rural areas were forewarned to prepare for the arrival of evacuees.[1623]

543. Accordingly, the pre-established practice of evacuating cities undermines the Defence claims that the evacuation of Phnom Penh was underpinned by either grave fears of impending American bombing or the need to alleviate critical humanitarian conditions in the capital.

10.3.4. *Ideological Values and the Agrarian Revolution*

544. NUON Chea and KHIEU Samphan also asserted that people were evacuated in order to build the agricultural foundation that would make Cambodia economically independent.[1624] Contemporaneous issues of the *Revolutionary Flag* in the months after the capture of Phnom Penh reveal that the transfer of the population of Phnom Penh satisfied and furthered the revolution's ideological class goals insofar as "colonialists and imperialists", *i.e.*, city dwellers, intellectuals, government officials and petty bourgeois, were overthrown, turned into peasants and "were scattered shamefully."[1625] In 1976, the *Revolutionary Flag* proclaimed "[w]hen we evacuated the people from the cities, we carried out class struggle."[1626] The Chamber agrees with the assessment of François PONCHAUD that the evacuation of Phnom Penh reflected a new concept of society, in which there was no place for the idea of a city.

[1622] *See* Section 3: Historical Background, paras 132-152.
[1623] *See* Section 10: Movement of the Population (Phase One), para. 516.
[1624] KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 4, ERN (En) 00000928 (expressing that evacuation was a communist plan but suited to the situation in Cambodia; he considered that first they needed to make their country independent); NUON Chea Interview by Japanese Journalist, E3/26, undated, pp. 12-13, ERN (En) 00329515-16. *See also,* CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 4, ERN (En) 00268896 (reported that at a meeting to discuss the evacuation of Kampot Town held in Phnom Sar about one month before the fall of Phnom Penh, Ta Mok said that people must be evacuated to the rural areas in order to rebuild the rural economy).
[1625] *Revolutionary Flag*, E3/5, August 1975, p. 11, ERN (En) 00401486 (if we had left them in Phnom Penh, they would have had strong power; when we entered Phnom Penh we subjugated them, we did not leave them in Phnom Penh. So then, in terms of private ownership, they have no power); *Revolutionary Youth*, E3/749, August 1975, p. 1, ERN (En) 00532682; *Revolutionary Flag*, E3/11, September 1977, p. 37, ERN (En) 00486249 (claiming that on 17 April 1975, the CPK completely realised its two tasks defined by the Party line, namely eradicating the imperialists from Kampuchea and abolishing the reactionary regime of the feudalists and comprador capitalists). *See also,* NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30 July 1978, ERN (En) 00762404 (noting how the petty capitalists who were evacuated from the cities had difficulties living in the countryside, but gradually became proud of the revolution).
[1626] *Revolutionary Flag*, E3/10 September-October 1976, p. 31, ERN (En) 00450531.

According to the Khmer Rouge, Phnom Penh's history was a product of French colonialism, Chinese commerce and the bureaucracy of the monarchy, followed by the republic which had to be swept away and replaced with an egalitarian rural society in order that man can know "that he is born from a grain of rice!"[1627]

545. Reflecting that the transfer of city dwellers was motivated by multiple considerations, in April 1976, on the occasion of the one year anniversary of the evacuation of Phnom Penh, an article in the *Revolutionary Flag* stated "even though removing people from the cities to the countryside seemed improper … this entirely sorted out the nation, … the people, … food supplies, … the economy, … politics, and … the military too."[1628]

10.4. Legal Findings

546. The Closing Order charges the Accused with murder, extermination, political persecution and 'other inhumane acts' of (i) attacks against human dignity and (ii) forced transfer, as crimes against humanity for crimes allegedly committed during movement of the population (phase one).[1629] The Chamber has previously concluded that the *chapeau* requirements of Article 5 have been fulfilled.[1630]

10.4.1. *Forced Transfer*

547. It has been established that from 17 April 1975 Khmer Rouge soldiers forcibly transferred the population of Phnom Penh, at least two million people, towards the countryside.[1631] The evacuation of Phnom Penh was effected pursuant to the Party's

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[1627] Book by F. Ponchaud: *Cambodia Year Zero*, E243.1, ERN (En) 00862037. *See also*, Section 11: Movement of the Population (Phase Two), para. 576.

[1628] *Revolutionary Flag*, E3/759, April 1976, p. 11, ERN (En) 00517859. *See also*, French Ministry of Foreign Affairs Telegram, Subject: Message for *Le Monde* Newspaper, E3/2696, 18 April 1975, ERN (En) 00486890 (recognising evacuation was probably a measure to take control of capital, solve food problem and to revolutionize the city).

[1629] Closing Order, paras 1373, 1377 (murder), 1381, 1387 (extermination), 1416 (political persecution) 1434-1436 (other inhuman acts comprising attacks against human dignity), 1448-1453, 1455, 1458-1459, 1461, 1468-1469 (other inhuman acts comprising forced transfer). On 19 October 2011, pursuant to severance, the Chamber clarified that paras 221-260 of the Closing Order relating to phase 1 of the population movement, and the offenses charged, fell within the scope of Case 002/01. *See* Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, E124/7.3, 18 October 2011, pp. 1-2.

[1630] *See* Section 4: General Overview: 17 April 1975 – 6 January 1979, para. 198.

[1631] *See* Section 10: Movement of the Population (Phase One), para. 520.

military, economic and ideological policy which had been established over the course of meetings in 1974 and 1975.[1632] In view of these meetings, as well as the massive scale of the evacuation and its coordinated nature, the Chamber finds that the evacuation of Phnom Penh was intentional.

548. The population of Phnom Penh at the time was composed of both permanent residents as well as people from other parts of the country seeking refuge.[1633] Nothing suggests that they were not legally present in Phnom Penh and the Defence does not challenge this. The surrounding circumstances indicate that the transfer was not by choice, even if a portion of Phnom Penh's refugees may have been happy to return to their home villages in view of the poor living conditions in Phnom Penh. In effecting the evacuation, armed Khmer Rouge soldiers deceived the city's population and exploited their fears and trust in their fellow Khmer by telling them they might be bombed,[1634] threatened them with death and actually shot those who did not follow orders immediately,[1635] and lined the roads directing the population to exit Phnom Penh.[1636] Even those who did not experience violence nevertheless felt the orders were not optional.[1637] In the circumstances, the Chamber is satisfied that the Khmer Rouge soldiers employed coercion, threats and fraud, and that the evacuees did not have a genuine choice of whether to remain in Phnom Penh or leave on 17 April 1975.

549. As to whether permissible grounds existed under international law for evacuating Phnom Penh, the Chamber finds that the population was not evacuated for imperative military reasons. The justification that the evacuation was intended to protect the population from American bombing was a clear deception.[1638] Moreover, the ongoing conflict with the Khmer Republic regime had concluded and the soldiers of the Khmer Republic countrywide had surrendered.[1639] The NUON Chea Defence also expressly reject that the evacuation had humanitarian objectives, a position at

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[1632] *See* Section 3: Historical Background, paras 132-133, 143-144.
[1633] *See* Section 3: Historical Background, para. 157.
[1634] *See* Section 10: Movement of the Population (Phase One), para. 530.
[1635] *See* Section 10: Movement of the Population (Phase One), para. 474.
[1636] *See* Section 10: Movement of the Population (Phase One), para. 481.
[1637] *See* Section 10: Movement of the Population (Phase One), para. 475.
[1638] *See* Section 10: Movement of the Population (Phase One), paras 529-530, 534.
[1639] *See* Section 10: Movement of the Population (Phase One), paras 460-463.

odds with its claim that the evacuation was motivated by the need to protect the population from U.S. bombing.[1640] Rather, the NUON Chea and KHIEU Sampan Defence contend that the evacuation was a legitimate resettlement policy aiming to regenerate the economy and hence alleviate humanitarian conditions in Phnom Penh.[1641] Economic policy is not one of the grounds recognised under international law that justifies forced transfer of a population. Further, to the extent that this argument contends the evacuation was intended to improve the food situation, the Chamber has already rejected the purported reasons underpinning this explanation.[1642] Consequently, the Chamber is not satisfied that any of the exceptions to the general prohibition of forcible population displacements apply to the actions of the Khmer Rouge soldiers in evacuating Phnom Penh, and thus finds that the evacuation was not justified by necessity.

550. Even if the Chamber were to accept that the humanitarian or economic situation could justify evacuation, the evacuation did not respect the requirement of proportionality.[1643] First, despite promises that the evacuation was temporary, several witnesses were told they would never return.[1644] In fact, most evacuees who survived did not return to Phnom Penh until after the fall of the regime in 1979.[1645] Instead, evacuees were continuously relocated in the ensuing months and years according to the country's production needs.[1646] Thus, the leadership failed to transfer evacuees back to their homes as soon as it became clear that there was neither a military nor humanitarian threat that might justify the continuation of such measures. Further, although there was some evidence that food, shelter, medicine and transport were provided during the evacuation journey, such instances were sporadic and clearly insufficient given the volume of evacuees leaving Phnom Penh.[1647] Lastly, many evacuees were made to evacuate without all of their family members, were made to

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[1640] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, para. 254.
[1641] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 240-258; [KHIEU Samphan's] *Conclusions finale*, E295/6/4, 26 September 2013, paras 34-36, 44-53.
[1642] *See* Section 10: Movement of the Population (Phase One), paras 538-540.
[1643] *See* Section 9: Applicable Law: Crimes Against Humanity, para. 450.
[1644] *See* Section 10: Movement of the Population (Phase One), para. 465 (fn. 1378), 486.
[1645] *See* Section 10: Movement of the Population (Phase One), para. 519.
[1646] *See* Section 11: Movement of the Population (Phase Two), paras 576, 580-581.
[1647] *See* Section 10: Movement of the Population (Phase One), paras 494-496.

abandon weak family members along the way, or were separated from family members at checkpoints during the journey.[1648]

551. Consequently, the Chamber finds that the evacuation of Phnom Penh was not justified on the basis of civilian security or military necessity and, in any event, was not proportional.

552. The Chamber finds that the evacuation of Phnom Penh itself caused the victims long-lasting and serious bodily and mental harm,[1649] the effects of which were compounded by the coercive and threatening circumstances in which the evacuation was effected[1650] and the inhumane conditions to which the evacuees were subjected during the subsequent journey.[1651] These acts were intentional, inhumane and rise to the level of severity of the other crimes against humanity enumerated in the ECCC Law. Accordingly, the Chamber finds that Khmer Rouge officials and soldiers committed the crime against humanity of other inhumane acts through forced transfer of the population.

10.4.2. ***Murder***

553. Those high-ranking military and civilian officials who had been publicly ear-marked for certain death prior to the taking of Phnom Penh and who had not fled were killed.[1652] Furthermore, numerous victims who were identified as soldiers or civilian officials of the Khmer Republic during the course of the evacuation were taken aside for execution elsewhere.[1653] Lastly, numerous victims who refused to leave their homes in Phnom Penh, as well as those who did not immediately follow the instructions of Khmer Rouge soldiers during the march out of the city were shot and killed on the spot.[1654] There was also substantial evidence of the individual killing of victims both in Phnom Penh and during the course of the evacuation for no

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[1648] *See* Section 10: Movement of the Population (Phase One), paras 466, 492, 513.
[1649] *See* Section 10: Movement of the Population (Phase One), paras 522-524.
[1650] *See* Section 10: Movement of the Population (Phase One), paras 471-475, 489-490.
[1651] *See* Section 10: Movement of the Population (Phase One), paras 491-492 (heat and exhaustion), 495 (lack of assistance), 497-498 (witnessing people dying), 499 (witnessing dead bodies).
[1652] *See* Section 10: Movement of the Population (Phase One), para. 503.
[1653] *See* Section 10: Movement of the Population (Phase One), paras 508, 511, 513-515.
[1654] *See* Section 10: Movement of the Population (Phase One), paras 474, 486.

discernible reason.[1655] Given that the foregoing executions often occurred at point blank range, or pursuant to a concerted effort to identify the victims before transferring them elsewhere for execution, the Chamber is satisfied that the perpetrators acted with intent to kill these victims.

554. Having considered the evidence as to the individual circumstances in which these deaths occurred, the Chamber finds that the victims included both ordinary civilians and civil servants of the Khmer Republic, as well as former soldiers of the Khmer Republic who were either detained, placed *hors de combat* or were otherwise no longer taking an active part in hostilities at the time they were killed, and that the perpetrators were aware of this. As concerns the killings of Khmer Republic soldiers that took place during the second search of the city,[1656] these arose in a context that may reasonably appear to be a combat situation. The evidence is insufficient to establish that those Khmer Republic soldiers were *hors de combat* or otherwise not taking part in active hostilities when they were killed. Consequently, the Chamber will not consider these killings in relation to this finding.

555. As concerns those Khmer Republic officials who were identified and subsequently disappeared at checkpoints, but whose fate was unknown,[1657] the evidence does not establish that the only reasonable inference is that they were all killed insofar as there is evidence that numerous Khmer Republic soldiers and civilian officials were also sent to villages for work or re-education.[1658]

556. Innumerable victims also died along the way from a range of illnesses as a result of the failure by Khmer Rouge soldiers to provide the evacuees with food, water, medical assistance and shelter or hygiene facilities.[1659] As to the *mens rea* of the perpetrators concerning the victims' death, the Chamber is satisfied that when Khmer Rouge soldiers acted they could foresee the possibility of their acts causing death, nonetheless they deliberately persisted in their conduct (*dolus eventualis*).[1660] First, the Chamber recalls that the Khmer Rouge had experience with moving

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[1655] *See* Section 10: Movement of the Population (Phase One), paras 490, 507, 513.
[1656] *See* Section 10: Movement of the Population (Phase One), para. 510.
[1657] *See* Section 10: Movement of the Population (Phase One), paras 513-514.
[1658] *See* Section 10: Movement of the Population (Phase One), para. 513.
[1659] *See* Section 10: Movement of the Population (Phase One), paras 491-492, 495-498.
[1660] *See* Section 9: Applicable Law: Crimes Against Humanity, para. 417.

populations from captured to liberated zones prior to April 1975 and some evidence indicates that deaths and starvation had resulted from the conditions experienced while moving these populations.[1661] Although these movements affected up to tens of thousands of people, the evacuation of at least 2 million people from Phnom Penh was incomparable in scale and complexity vis-à-vis the leadership's past experiences. Further, the evacuation of Phnom Penh was the culmination of years of protracted fighting and a long siege.[1662] Its population had experienced ongoing food shortages for an extended period and was thus already seriously weakened by 17 April 1975.[1663] In these circumstances, the population was expelled from the capital with no notice and without adequate supplies, a situation which was exacerbated by the deliberate ruse that they would return within three days and thus need not bring more.[1664] Further aggravating the situation, they were expelled at the hottest time of the year and in the almost complete absence of any aid or assistance.

557. Despite some evidence of preparation prior to the evacuation which anticipated the arrival of Phnom Penh's evacuees in the countryside,[1665] former Khmer Rouge soldiers involved with the evacuation confirmed that *during* the evacuation their respective units did not help or offer any assistance to those evacuees leaving the city, or receive instructions to do so.[1666] With respect to the patients who were hospitalised, the Khmer Rouge evacuated everyone without exception, including the elderly, the weak, the sick and the injured,[1667] without consideration for the effect that this would have on the individuals. Most notably, there was no plan to assist even the most vulnerable, such as infants, children, the sick and injured, some of whom were only recently operated on, as well as pregnant women, the elderly and the infirm. PHY Phuon stated that details such as how to feed people or to care for the elderly, children, or the sick during the evacuation were not discussed during the April 1975 meeting he guarded.[1668] NUON Chea acknowledged that the leadership did not have

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[1661] *See* Section 3: Historical Background, para. 125, fn. 365.
[1662] *See* Section 3: Historical Background, paras 161-167.
[1663] *See* Section 3: Historical Background, paras 157-160.
[1664] *See* Section 10: Movement of the Population (Phase One), paras 464-467.
[1665] *See* Section 10: Movement of the Population (Phase One), paras 516, 541-542.
[1666] *See* Section 10: Movement of the Population (Phase One), paras 494-496.
[1667] *See* Section 10: Movement of the Population (Phase One), para.476.
[1668] *See* Section 10: Movement of the Population (Phase One), para. 495.

time to determine how many hospitals or patients would be affected by the decision to evacuate.[1669]

558. Consequently, the Chamber is satisfied that in expelling the population from Phnom Penh, Khmer Rouge soldiers knew that the evacuation of at least these particularly vulnerable groups in the especially arduous conditions already described by the Chamber would result in their deaths. Accordingly, the Chamber is satisfied that the *mens rea* for murder has been established.

559. Accordingly, the Chamber finds that the deaths of those victims who were shot and killed during the evacuation of Phnom Penh, as well as those who died due to the conditions and lack of any assistance constitute murder.

10.4.3. ***Extermination***

560. The Chamber has found it established that the deaths of those victims who were shot and killed during the evacuation of Phnom Penh (except those who died while engaged in combat), as well as those who died due to the conditions and lack of any assistance during the course of their journeys to their home villages, constitute murder.[1670] Although it is not possible to determine how many victims resulted from executions as opposed to the severe conditions imposed during the journey, having regard to the totality of the evidence before the Trial Chamber describing the deaths that occurred during the evacuation, the Trial Chamber finds that overall the element of scale required for the crime of extermination is satisfied.

561. Having established that the foregoing murders satisfy the requirement of scale for the crime of extermination, the Chamber now examines the *mens rea* of the perpetrators. As concerns the killings of those former Khmer Republic officials identified after searches within Phnom Penh, at various checkpoints or in response to radio announcements, the only reasonable conclusion the Chamber can reach on the basis of the evidence is that there was a deliberate, organised, large-scale operation to kill former officials of the Khmer Republic, even if not all such officials shared this fate. In view of this large-scale operation, the Chamber is satisfied that Khmer Rouge

[1669] *See* Section 10: Movement of the Population (Phase One), para. 477.
[1670] *See* Section 10: Movement of the Population (Phase One), para. 559.

soldiers intended to kill Khmer Republic officials on a massive-scale, and through these acts, committed extermination.

562. As concerns those victims who died as a result of the severe conditions imposed during the journey, the Chamber has found that Khmer Rouge soldiers acted with *dolus eventualis* in their regard.[1671] Adopting the same reasoning already outlined with respect to the perpetrators' *mens rea* for the crime of murder, and having regard to the scale of the evacuation operation and that it targeted the total population of Phnom Penh at the time, at least 2 million people, the Chamber is also satisfied that in carrying out the evacuation of Phnom Penh, the Khmer Rouge soldiers intended to create conditions of life that lead to death in the reasonable knowledge that such act or omission was likely to cause the death of a large number of persons. Accordingly, through these acts, the Chamber finds they committed extermination.

10.4.4. ***Other Inhumane Acts of Attacks Against Human Dignity***

563. At least two million people in Phnom Penh were forcibly evicted from their houses by Khmer Rouge soldiers at gunpoint with almost no prior warning and in terrifying and violent circumstances.[1672] They were forced to abandon their houses and property under the ruse that they would return within three days.[1673] The majority witnessed beatings, shootings and killings and saw countless dead bodies lying along the roads as they exited Phnom Penh.[1674] Some people even slept next to dead bodies.[1675]

564. The evacuees' journeys were marked by the almost complete absence of food, water, medical care, shelter and hygiene facilities for periods ranging from several days to several weeks.[1676] Coupled with the peak of the hot season, and duped into believing they would only be gone for several days, many left unprepared and were

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[1671] *See* Section 10: Movement of the Population (Phase One), paras 556-558.
[1672] *See* Section 10: Movement of the Population (Phase One), paras 464, 468, 471-474.
[1673] *See* Section 10: Movement of the Population (Phase One), paras 465-466.
[1674] *See* Section 10: Movement of the Population (Phase One), paras 473-474, 486, 489-491, 497-498.
[1675] *See* Section 10: Movement of the Population (Phase One), para. 488.
[1676] *See* Section 10: Movement of the Population (Phase One), paras 487-488, 491, 495-496.

forced to improvise food and accommodation in the face of a grim situation.[1677] In particular, the sick, the injured, the elderly, the pregnant and the young suffered, and countless victims succumbed to the unforgiving conditions throughout the journey. People were also forced to bury their dead children in forests or to abandon their elderly or sick family members by the roadside to a fate of certain death.[1678] Further, many people still do not know the fate of those family members who were taken away.[1679]

565. The Chamber thus finds that the violent circumstances surrounding the evacuation of the city, the severity of the conditions experienced by the evacuees, intensified by the length of their journeys to their home villages, and their ill-treatment by Khmer Rouge soldiers throughout constituted serious attacks against human dignity and caused the victims serious bodily and mental harm.[1680] Further, in light of the pre-established and systematic nature of the operation, its scale and its ongoing duration, the Chamber is also satisfied these acts were intentional. The Chamber is satisfied that the foregoing acts rise to the level of severity of the other crimes against humanity enumerated in Article 5 of the ECCC Law. Accordingly, the Chamber finds that Khmer Rouge officials and soldiers committed the crime against humanity of other inhumane acts through attacks against human dignity.

10.4.5. ***Political Persecution***

566. The particular acts amounting to persecution must be expressly charged.[1681] In determining whether this requirement has been met, the Chamber will have regard to all factual and legal findings in those portions of the Closing Order included within the scope of Case 002/01 and relevant to movement of the population (phase one).[1682]

567. According to the Closing Order, the Khmer Rouge committed persecution in multiple ways: against high-ranking military and civilian officials insofar as they were

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[1677] *See* Section 10: Movement of the Population (Phase One), paras 466, 487-488.
[1678] *See* Section 10: Movement of the Population (Phase One), paras 492, 497-498.
[1679] *See* Section 10: Movement of the Population (Phase One), paras 511, 513-514.
[1680] *See* Section 10: Movement of the Population (Phase One), paras 522-524.
[1681] *See* Section 9: Applicable Law: Crimes Againt Humanity, para. 431.
[1682] A Chamber should consider a charging instrument as a whole in determining whether it sufficiently pleads the facts and their legal characterisation: *Seromba* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 123.

automatically excluded from the goal of building socialism; against low-ranking officers who were arrested and often executed; and against 'new people' or '17 April people' insofar as they were subjected to harsher treatment with a view to re-education. During population movements, real or perceived enemies of the CPK were subjected to harsher treatment and living conditions with a view to re-educating them or identifying enemies amongst the targeted groups.[1683]

568. Based on a complete reading of the Closing Order, the Chamber considers that the various acts charged as political persecution were implemented through a number of crimes. The exclusion of high-ranking Khmer Republic officials was effected by murder.[1684] Further, the arrest[1685] and execution of low-ranking Khmer Republic officials was effected by murder and/or extermination.[1686] Last, the harsher treatment of 'New People' characterised as re-education was effected through forced transfer[1687]

[1683] Closing Order, paras 1417-1418.

[1684] Closing Order, paras 208 (public declarations of intent in February 1975 to execute the most senior Khmer Republic figures upon victory were followed after 17 April 1975 by a secret decision to kill many other members of the Khmer Republic elite [and] "*to do whatever had to be done in order to make it impossible for them to stage a counter-revolutionary comeback"*), 209 (during the evacuation of the population of Phnom Penh, former officials of the Khmer Republic, especially high-ranking officials, were targeted to be arrested and killed), 1108 (discussing the Second National Congress at which the Congress called for the killing of the *"seven traitors in Phnom Penh"*), 1110 (discussing the killing of LONG Boret and SIRIK Matak), 1113 (in December 1996, IENG Sary said in an interview that he knew nothing at all about the plan to kill LON Nol military officers and civil servants during the evacuation of Phnom Penh) 1150 (the content of KHIEU Samphan's speeches included, among others, the overthrow of the traitorous LON Nol regime and the elimination of certain members of the regime), 1158 (noting KHIEU Samphan's communiqué on behalf of the FUNK stating that the *"seven traitors in Phnom Penh … Lon Nol, Sirik Matak, Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret and Sosthene Fernandez"* should be killed), 1193 (same).

[1685] Closing Order, para. 234 (it is reported that LON Nol soldiers were identified by questioning and taken away separately from the people leaving the city…LON Nol soldiers, officials and police officers reporting to work for the Party were then taken away to an unknown location before disappearing).

[1686] Closing Order, paras 208 (Public declarations of intent in February 1975 to execute the most senior Khmer Republic figures upon victory were followed after 17 April 1975 by a secret decision to kill many other members of the Khmer Republic elite [and] "*to do whatever had to be done in order to make it impossible for them to stage a counter-revolutionary comeback"*), 209 (during the evacuation of the population of Phnom Penh, former officials of the Khmer Republic, especially high-ranking officials, were targeted to be arrested and killed), 235 (witnesses refer to seeing the executions of LON Nol soldiers and seeing their dead bodies in the streets).

[1687] Closing Order, paras 161 (population movements were carried out for the purpose of, amongst others, depriving city dwellers and former civil servants of their economic and political status and transforming them into peasants), 227 (those originating from Phnom Penh were identified as new people, 17 April people or depositee people and were targeted on arrival based on this identity), 248 (IENG Sary stated that it was necessary to train people from the cities to endure moral and physical sufferings through hard labour).

and the ensuing acts of murder and/or extermination[1688] or attacks against human dignity.[1689]

569. The Khmer Rouge identified several groups it regarded as enemies or as obstacles to the pursuit of its political agenda of socialist reform, in particular: high-ranking military and civilian officials, among them the seven super-traitors whom they had publicly identified by radio, announcing it was necessary to kill them; those who held positions with the former Khmer Republic, both soldiers and civil servants; and people who lived in the city who became known as '17 April people' or 'new people'. As these groups were identified pursuant to criteria defined by the CPK leadership, and the backgrounds of each were verifiable, as demonstrated by checkpoints and questioning of the latter two groups along the way, the Chamber is satisfied that each constitutes a sufficiently discernible group.

570. The Chamber has found that the killing of high-ranking military and civilian officials who had been publicly ear-marked for certain death prior to the taking of Phnom Penh constitutes the crime of murder.[1690] The Chamber has also found that the killing of other Khmer Republic officers on or after the taking of Phnom Penh constitutes the crimes of murder and extermination (except those who were killed while engaged in combat).[1691] Further, the Chamber has found that the killings of civilians living in Phnom Penh, their forced evacuation and the treatment to which they were subjected in connection with the evacuation of Phnom Penh (movement of the population (phase one)) amounted to the crimes against humanity of murder, extermination and other inhumane acts comprising forced transfers and attacks against human dignity. The Chamber also recalls that after entering Phnom Penh Khmer Rouge soldiers arrested many Khmer Republic soldiers, even after the Khmer Republic had announced its surrender; Khmer Republic soldiers were subsequently either imprisoned or simply disappeared with no explanation to family members,

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[1688] Closing Order, paras 232 (CPK troops shot people dead if they refused to leave their homes), 240 (people were killed for small things such as not wanting to abandon their bicycles).
[1689] Closing Order, paras 231 (the CPK troops engaged in threats and the use of force to ensure people left their homes), 233 (ill treatment and acts of violence, such as beating and shooting in the air, were also reported against the civilian population), 239 (alleging the lack of food, water, security, protection, shelter, or medical treatment during the evacuation), 240 (seeing corpses along the road).
[1690] *See* Section 10 : Movement of the Population (Phase One), para. 553.
[1691] *See* Section 10 : Movement of the Population (Phase One), paras 553, 561.

often to this date.[1692] The Chamber will now consider whether the foregoing underlying acts were discriminatory in fact and deliberately perpetrated with the intent to discriminate against these groups such as to also constitute political persecution.

571. Considering that Khmer Rouge soldiers actively sought out members of the fallen Khmer Republic throughout Phnom Penh, at checkpoints, by means of radio announcements duping them into identifying themselves, before arresting or executing them, and that they were considered the enemy,[1693] the Chamber is satisfied that the arrest and murders of former Khmer Republic officials were committed with the intent to discriminate on political grounds. Considering also the attitudes of the Khmer Rouge and its soldiers towards city people, evidence of criticisms that they were capitalists levelled in their regard, and that evacuees from Phnom Penh were labelled '17 April people' or 'new people' and treated with suspicion in the base villages,[1694] the Chamber is satisfied that Khmer Rouge soldiers intended to discriminate against the evacuated city people on political grounds. Based on this, the Chamber finds that Khmer Rouge soldiers acted with the requisite discriminatory intent at the time of evacuating the population of Phnom Penh.

572. The foregoing acts were also discriminatory in fact as the victims were identified at checkpoints in the course of evacuation as both high-ranking and lower Khmer Republic officials (civilian and military), as well as city people. Additionally, these identifiable groups were targeted by the Khmer Rouge on a discriminatory basis, namely that they might harbour individuals who disagreed with the CPK's ideology. The Chamber therefore rejects the submission made by the NUON Chea Defence and the KHIEU Samphan Defence that, because the Khmer Rouge's ultimate goal was to treat people equally, there was no differential treatment and therefore no discrimination or persecution.[1695] For the same reason, the Chamber also rejects the submission made by the NUON Chea Defence and the KHIEU Samphan Defence that

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[1692] *See* Section 10 : Movement of the Population (Phase One), paras 508, 513, 515.
[1693] *See* Section 10: Movement of the Population (Phase One), paras 504 (fn. 1511), 511-515.
[1694] *See* Section 10: Movement of the Population (Phase One), para. 517.
[1695] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 276-288; T. 22 October 2013 (NUON Chea Closing Statements), p. 71; KHIEU Samphan's *Conclusions finales*, E295/6/4, 26 September 2013, paras 116-120; T. 25 October 2013 (KHIEU Samphan Closing Statements), pp. 98-100.

the evacuation of Phnom Penh was indiscriminate such that it should not be held to amount to persecution.[1696]

573. Acts committed against these groups variously infringed upon and violated fundamental rights and freedoms pertaining to movement,[1697] property,[1698] family,[1699] life,[1700] personal dignity,[1701] liberty and security,[1702] freedom from arbitrary or unlawful arrest,[1703] a fair and public trial and equality before the law[1704] as enshrined in customary international law.

574. The acts charged as persecution include independent crimes against humanity as well as acts which, on their own, do not necessarily amount to crimes (in particular, arrests). Looking at these acts together and considering the context in which they were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution. Accordingly, the Chamber is satisfied that the instances of murder, extermination, arrests and the other inhumane acts of

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[1696] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 276-288; KHIEU Samphan's *Conclusions finales*, E295/6/4, 26 September 2013, paras 116-120.

[1697] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 49; Universal Declaration on Human Rights, Art. 13; Racial Discrimination Convention, Art. 5(d)(i); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5); *See also, Stakić* Appeal Judgement, para. 317.

[1698] As evidence of the state of customary international law, *see* Geneva Convention (IV), Arts. 33, 53, 97-98, 114; Universal Declaration on Human Rights, Art. 17(2); Racial Discrimination Convention, Art. 5(d)(v); ECHR Protocol No. 1, Art. 1; ACHR, Art. 21; *See also, Blaškić* Appeal Judgement, para. 145.

[1699] As evidence of the state of customary international law, *see* Geneva Convention (IV), Arts. 27, 49, 82; Universal Declaration on Human Rights, Arts. 12, 16; ICCPR, Arts. 17, 23; ECHR, Arts. 8, 12; ACHR, Art. 17.

[1700] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(a); Universal Declaration on Human Rights, Art. 3(1)(a); Racial Discrimination Convention, Art. 5(b); ICCPR, Art. 6; ECHR, Art. 2; ACHR, Art. 4; *See also, Kordić and Čerkez* Appeal Judgement, para. 106.

[1701] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(c); Universal Declaration on Human Rights, Arts. 1, 22, 23(3); Racial Discrimination Convention, Art. 5; ICCPR, Arts. 7, 10; ACHR, Arts. 5-6; *See also, Kordić and Čerkez* Appeal Judgement, para. 106.

[1702] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(b) (prohibiting the taking of hostages); Universal Declaration on Human Rights, Art. 3; Racial Discrimination Convention, Art. 5(b); ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

[1703] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 42 (allowing only deprivations of liberty of protected persons where that individual constituted a threat to the security of the depriving party); Universal Declaration on Human Rights, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

[1704] As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(d) (concerning the passing of sentences and judicial guarantees); Universal Declaration on Human Rights, Arts 6, 10; Racial Discrimination Convention, Art. 5(a); ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

forced transfer and attacks against human dignity variously committed against former Khmer Republic officials and city people constituted political persecution.

11. MOVEMENT OF THE POPULATION (PHASE TWO)

575. According to the Closing Order, between around September 1975 and 1977, thousands of people were moved from the Central (old North), Southwest, West and East Zones (Kandal, Kampong Thom, Takeo, Kampong Speu, Kampong Chhnang and Kampong Cham[1705] Provinces) to Sector 103 (Preah Vihear), Sector 106 (Siem Reap), the Northwest Zone (Battambang and Pursat Provinces, including the modern-day Provinces of Pailin and Banteay Meanchey[1706]) and the Central (old North) Zone (including parts of Kampong Thom and Kampong Cham Provinces).[1707] The Closing Order further alleges that people were also moved from or within the East Zone (Prey Veng and Svay Rieng), to Kratie (Sector 505), within the Central (old North) Zone and within Battambang Province.[1708] According to the Closing Order, the main reason for the decision to move people lay in the effort to focus labour resources on agriculture and infrastructure in those regions, particularly the North and Northwest Zones, which were frequently described as having fertile land and more available food.[1709] Additionally, the Closing Order alleges that 'New People' had to be moved in order for them to be transformed into peasants.[1710] Finally, the Closing Order alleges that 'New People' were moved from the border between the East Zone and Vietnam after war broke out in 1975 or 1976.[1711]

11.1. Overview

576. After 17 April 1975, defending and building the country became the main Party line.[1712] The Party focused on building and expanding cooperatives to advance both

[1705] All references to Kampong Cham Province in this section refer to that Province as it existed before 17 April 1975, incorporating modern-day Kampong Cham and Tbong Khmum Provinces. Tbong Khmum Province was separated from Kampong Cham by Royal Decree on 31 December 2013.
[1706] Banteay Meanchey was not separated from Battambang until 1988. Further, Pailin Province was not separated from Battambang until 1996. All references to Battambang Province in this section refer to it as it existed before 17 April 1975 (incorporating modern-day Battambang, Pailin and Banteay Meanchey Provinces).
[1707] Closing Order, paras 163, 262, 1448.
[1708] Closing Order, paras 163, 263, 1448.
[1709] Closing Order, paras 161, 165, 276-277, 1460.
[1710] Closing Order, paras 161, 165, 277, 1460.
[1711] Closing Order, para. 278.
[1712] T. 29 May 2013 (KHIEU Samphan), pp. 20-24 (The second phase of the revolution was the Socialist Revolution phase and the construction of communism); T. 29 May 2013 (NUON Chea), pp. 55-56 (Leaders wanted to gather a collective, national force to prevent Cambodia from being invaded

the class struggle – the "dictatorship of the proletariat" – and agricultural production, thereby securing the socialist revolution.[1713] In order to build and expand the cooperatives, people had to be moved. The Party leadership believed that population movements allowed it to overcome challenges in building and defending the country and re-organising the people, economy, politics and military.[1714]

577. The Party policy concerning population movements was one of the topics frequently addressed during propaganda campaigns, education sessions and in Party publications to ensure strict and effective implementation. Every three to six months, the Party leadership published its policy, plans and directions for members in the *Revolutionary Flag* and *Revolutionary Youth* magazines.[1715] Further, Party leaders and representatives, including POL Pot and NUON Chea, travelled throughout the country, disseminating the Party line to zone and sector secretaries, assemblies and committees.[1716] There were also meetings of district and regional secretaries and

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and to liberate it from the imperialists); *Revolutionary Youth*, E3/729, October 1975, p. 3, ERN (En) 0000357902 (The two new objectives of the Party following 17 April 1975 were to build and defend the country); *Revolutionary Youth*, E3/734, July 1976 , pp. 3-4, ERN (En) 0000360778-9 (Since April 1975, the Party had two new objectives: defending and building the country); T. 20 March 2012 (KAING Guek Eav), p. 61.

[1713] Decisions of Party Committee Conference of All Divisions, E3/790, 10-14 July 1976, pp. 2-3, ERN (En) 00714787-8 (Concerning the Party's on-going execution of plans for 1976, in July 1976, it was emphasised that resistance to eliminating the vestiges of all private ownership of feudalist, capitalist, petty bourgeoisie and other non-proletariat classes intensifies and strengthens agricultural production, national construction and defence); T. 20 March 2012 (KAING Guek Eav), p. 38 (In May 1975, the Party ordered the establishment of cooperatives outside the liberated zones); *Revolutionary Flag*, E3/11, September 1977, p. 48, ERN 00486259 (The dictatorship of the proletariat was applied to those who opposed the Party); *See also*, Section 3: Historical Background, para. 113; Section 4: General Overview, para. 169.

[1714] *Revolutionary Flag*, E3/759, April 1976, p. 11, ERN (En) 00517859; T. 31 October 2013 (NUON Chea Final Statement), pp. 30 (Evacuation was necessary to ensure the safety and liberation of the people from slavery and injustice); Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976, p. 5, ERN (En) 00183986 (If the Party had left people and had not evacuated them from cities and towns, the Party would not have the peace and tranquillity they enjoyed later. If it had not been absolute about making cooperatives, and not been absolute about making socialism, it would not be victorious and living in peace); French Ministry of Foreign Affairs Telegram, Subject: The Situation in Cambodia: Mr. POL Pot Official Visit to China and North Korea, E3/484, 26 October 1977, p. 8, ERN (En) 00771187 (Reporting that POL Pot stated that evacuations of cities and those undertaken in the autumn of 1975 were to break up the spy organisations).

[1715] *See* Section 6: Communication Structure, paras 261-266; *Revolutionary Flag*, E3/743, July 1977, p. 22, ERN (En) 00476177 (It was imperative to concentrate on disseminating policies well to "whip up mighty movements" that were correct and follow the party line).

[1716] *See* Section 6: Communication Structure, paras 269-297; T. 13 June 2012 (OEUN Tan), pp. 56-57; T. 14 June 2013, pp. 19-20 (Between 1975 and 1979, OEUN Tan, POL Pot's bodyguard, accompanied POL Pot on visits to canals and rice paddies in Battambang, Kampong Cham and Siem Reap. POL Pot met with sector committees on these trips); T. 19 April 2012 (SAUT Toeung), pp. 38-40, 49-57, 68-73 (SAUT Teoung, one of NUON Chea's bodyguards and messengers between 1975 and 1978, testified

representatives in Phnom Penh concerning the need to build and defend the country.[1717] On the local level, regular meetings, re-education sessions and self-criticism exercises ensured that the Party line was further disseminated to the cooperatives, cadres and people.[1718] Thus even the ordinary Khmer Rouge soldiers knew or heard about the evacuation plans between mid-1975 and 1977.[1719]

578. Additionally, the Party controlled the means and modes of transportation necessary to effectuate the population movements. The Party Centre, zone, sector and district committees had to authorise transfers or movement in their respective areas.[1720] The Phnom Penh - Mongkolborei Railway, which served as a key means of

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that NUON Chea travelled to the provinces to preside over meeting and train cadres. He frequently visited dams and other work-sites, for example, the 1st January Dam, a dam on the Chinit River, rice fields in Kampong Chhnang and others. NUON Chea regularly met with Ta Mok in Takeo Province, SAO Phim in the East Zone and Ta Nhim (RUOS Nhim) near Battambang Town, as well as other regional leaders).

[1717] T. 16 July 2013 (Stephen HEDER), pp. 102-106 (Between May and June 1975, there was a series of meetings of district and regional secretaries and representatives of all other units and forces, at which NUON Chea spoke of the need to "smash" and "eliminate" former soldiers and officials of the Khmer Republic).

[1718] *See* Section 6: Communication Structure, paras 269-297; T. 28 May 2012 (NY Kan), pp. 35-36, 40-42, (People were educated at the zone level and then would impart their knowledge to the sectors. From late 1975 until late 1977, NY Kan provided education to all elements in Sector 32, West Zone, including ordinary people. The goal of the propaganda was to increase food production. The Secretary of the Central Zone instructed NY Kan concerning the contents of political indoctrination sessions, including the building of canals and the planting of rice); T. 26 January 2012 (PRAK Yut), pp. 43, 55-56, 96-97 (PRAK Yut was in Kampot from before 17 April 1975 until early 1977. At least every three months in Kampot, there were district committee meetings to discuss the direction of work, including the construction of dams, dikes and canals).

[1719] IENG Phan Interview Record, E3/419, 23 November 2009, pp. 3, 7, ERN (En) 0041104, 00411008 (Ren, Ta Mok's son-in-law, was commander of Regiment 11, Brigade 2. IENG Phan, commander of Special Battalion 203, Brigade 2, personally heard Ren discuss the evacuation plans in mid-1975 to 1978 and personally saw people being evacuated. In general, even the ordinary Khmer Rouge combatants knew or heard about evacuation plans).

[1720] KHIEU Samphan Letter to Co-Investigating Judges, E3/112, 30 December 2007, p. 2, ERN (En) 00170882 (There was a general rule forbidding coming and going without clear work or official reason); Commcerce Committee Document: *Letter of Permit*, E3/1905, 25 May 1975, p. 1, ERN (En) 00234253 (Rith of State Commerce authorised a cadre to go and conduct operations in cities of Phnom Penh and Kampong Cham); KHIEU Samphan Letter to "All My Compatriots", E3/205, 16 August 2001, p. 3, ERN (En) 00149526 (There were rules prohibited traveling without permission); T. 21 June 2012 (KHIEV Neou), p. 71-2 (Every truck driver had to have a pass to move from one place to another within the Southwest Zone. This was issued by Ta Mok or by the Zone Committee); T. 20 June 2012 (YUN Kim), pp. 14-15 (The district had to authorise any travel and it was very rare after 1975 for "ordinary people" to be allowed to travel); T. 4 July 2013 (SUM Alat), p. 50 (Transport arrangements for evacuees to Pursat were made by CPK authorities); T. 27 March 2012 (KAING Guek Eav), pp. 56 ("means of production including […] resources on the lands and the ground […][were] in total control of the Party"); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, pp. 9-10, ERN (En) 00443071-2 (Travel, even in between neighbouring villages, was often impossible and under the control of the Party. The Khmer Rouge prevented travel in order to impede the ability of the people to flee or for resistance elements to circulate. Travel requests were usually

population movement between September 1975 and 1977, was under the management of the Train Unit in Phnom Penh.[1721] Khmer Rouge soldiers were in charge of railway work and reported only to Phnom Penh.[1722] In October 1975, the Standing Committee assigned VORN Vet responsibility for "industry, railways and fishing".[1723] From April 1976, MEY Prang was Minister of Communications and Transportation. In this role, among other duties, he was in charge of the Train Unit.[1724] The Communications and Transportation Committee, as well as the Commerce Committee which as early as September 1975 was also tasked with arranging population movements,[1725] fell under the Ministry of Economics, headed by VORN Vet.[1726]

579. Overall, the exact number of people re-located between September 1975 and December 1977 was not proven by the evidence and given the specific circumstances will remain unknown. Although official DK records concerning this movement often indicate how many were planned for displacement, as well as how many were

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rejected, even if a person was seriously ill. If granted, a person would be accompanied by the Khmer Rouge or be issued a laissez-passer).

[1721] T. 23 October 2012 (SOKH Chhin), pp. 30, 73-74; UM Proeung Interview Record, E3/3957, 8 December 2009, p. 9, ERN (En) 00422355.

[1722] T. 23 October 2012 (SOKH Chhin), p. 28 (Local zone and sector cadres did not assist with the work on the trains or the movement of people); UM Proeung Interview Record, E3/3957, 8 December 2009, p. 9, ERN (En) 00422355 (The Khmer Rouge cadres working on the railway only reported to Phnom Penh).

[1723] Section 5: Administrative Structures, para. 232; Section 14: Joint Criminal Enterprise, para. 752; Meeting of the Standing Committee, 9 October 1975, E3/182, pp. 1-2, ERN (En) 00183393-4.

[1724] T. 29 April 2013 (SAR Sain), p. 25 (MEY Prang was from the railway station department-ministry); T. 4 June 2012 (SAR Kimlomouth), p. 100 (MEY Prang was in charge of the railway station); SAKIM Lmut Interview Record, E3/105, 19 December 2009, p. 4, ERN (En) 00425224 (MEY Prang was head of the railway committee); SAR Sarin DC-Cam Interview, E3/4596, 5-6 May 2009, pp. 50-51, 77, ERN (En) 00739542-3, 00739570 (MEY Prang was Minister of Transportation and Railways); French Ministry of Foreign Affairs Memorandum, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, p. 3, ERN (En) 00525813 (MEY Prang was Minister of Transportation and Communications and led delegations abroad in this capacity); Council of Ministers Meeting Minutes, E3/794, 31 May 1976, pp. 16-17, ERN (En) 00182686-7 (Comrade Prang reporting on communications and transportation by train); Standing Committee Minutes, E3/235, 19-21 April 1976, p. 2, ERN (En) 00183417 (Appointed secretary of the Railway Committee); *Uprising in Cambodia Threatens Regime Collapse* (in SWB Collection), E3/565, 3 October 1978, p. 2, ERN (En) S 00013162 (MEY Prang headed the committee for communications).

[1725] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 15, ERN (En) 00523583 (State Commerce was tasked with the transportation of hundreds of thousands of people); Commerce Ministry Minutes, E3/1110, 25-26 July 1976, p. 6, ERN (En) 00583834 ("Mass movement is actively stirred up. Attack to achieve the right target by using both human and material forces to ensure the 3 tons per hectare target and build 30% of new rice field dike system throughout the country"); Commerce Ministry Report, E3/1159, 25-26 July 1976, p. 2, ERN (En) 00701588 (The Ministry of Commerce contributed to carrying out a shock assault resolutely to achieve the three tonne-per-hectare rice production and build new dikes).

[1726] Section 5: Administrative Structures, para. 235; Section 14: Joint Criminal Enterprise, para. 766.

working at a given location or work-site, there is little official information concerning how many were actually moved. The Chamber has nevertheless attempted to identify the minimum number of people displaced during movement of the population (phase two) on the evidence available. In so doing, the Chamber emphasises that the actual number of those displaced likely far exceeds the minimal estimate it has reached.

580. In relation to inter-regional movements from south to north, the Chamber notes that in August 1975 the Standing Committee planned to send between 400,000 and 500,000 to Battambang and Pursat Provinces (Northwest Zone).[1727] An additional 20,000 were to be sent to Preah Vihear Province (Sector 103).[1728] Between September 1975 and early 1977, victim accounts indicate that, at different stages of movement, hundreds, thousands and tens of thousands were displaced from individual villages,[1729] thousands waited at various assembly points,[1730] and hundreds and thousands were then transported in individual trucks,[1731] boats[1732] and trains.[1733]

[1727] Standing Committee Report, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978.

[1728] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22, ERN (En) 00523590.

[1729] LI Him Civil Party Application, E3/3978, 12 October 2009, p. 2, ERN (En) 00893434; SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (SEM Virak, his family and about 2,000 others were sent to the village of Chrek Khmom, Prey Veng Province. In May 1976, they were transferred to Phnom Penh, then Battambang where they were sent to various districts); *Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 July 1978, pp. 15-16, ERN (En) 0087551-2 (Around December 1975, 35,000 people previously evacuated from Phnom Penh were re-evacuated from Srok Koh-Sotin, Kampong Cham Province to Kampong Thom Province).

[1730] T. 7 February 2013 (PIN Yathay), pp. 6-7 (Thousands of travellers from various locations were assembled at Angk Roka); KIM Heng OCP Interview Record, E3/5639, 3 August 2008, p. 4 ERN (En) 00210498 (People were first assembled at Chrey Preah Phneou, Tram Knrar, Kampong Speu Province. After waiting for two to three days, the Khmer Rouge drove around 3,000 evacuees in 60-70 trucks, 40-50 people in each truck, to Pursat Town); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 232, ERN (En) 00237937 (Thousands of new people were camped out a train depot in Pursat Province waiting for onward transport).

[1731] SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702 (From Ponhea Leu District, hundreds of people were taken to Damnak Smach railway station); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (SEM Virak, his family and about 2,000 others were sent to Prey Veng Town and then by truck to Phnom Penh. After being forcibly transferred from Phnom Penh in April 1975, SEM Virak and his family were transferred to the village of Chrek Khmom, Prey Veng Province, were next transferred, in May 1976, to Phnom Penh by boat and finally by truck and train to Battambang where his family and around 2,000 others were sent off in one night to different districts.); T. 5 December 2012 (PECH Srey Phal), p 48 (About 2,000 people were re-located from Kampong Chhnang to Pursat by truck at the beginning of 1977); T. 7 February 2013 (PIN Yathay), p. 7 (After two or three weeks in Angk Roka, PIN Yathay, his family and approximately 2,000 others boarded 20-30 trucks for Battambang); T. 5 December 2012 (PECH Srey Phal), pp. 47-48, 57 (Around the beginning of 1977, approximately 2,000 people were transferred by vehicle from Kampong Chhnang to Pursat Province); T. 21 May 2013 (PRUM Son), pp. 12-13, 48-50 (About 3,000 evacuees were transferred by truck from Kampong Thom to Sector 103).

Indeed, the East Zone sent a report to POL Pot, on 30 November 1975, concerning the transfer of 50,000 people to the Central (old North) Zone.[1734] In January 1976, the Far Eastern Economic Review reported that, in the last two months of 1975, 300,000 people were moved to Battambang Province.[1735] In June 1977, the Sector 5 Committee in Battambang (Northwest Zone) reported that the majority of the population in that Sector were 'New People'. In two out of four districts in Sector 5, there were nearly 120,000 people from Phnom Penh.[1736] Finally, contemporary DK-era estimates indicate that between 300,000 and 400,000 were moved during phase two.[1737] On the basis of this incomplete record, the Chamber is satisfied that movements from the southern to northern regions of Cambodia were conducted on a massive scale. At a bare minimum, at least 300,000 to 400,000 people were displaced.

581. In relation to intra-regional movements in the northern, southern and central regions, any indicative record or estimate as to the total number moved is notably absent. However, the Chamber notes that the Party leadership intended that each cooperative would have 1,000 families and warned that, until that was achieved, population movements would be on-going based on labour requirements.[1738] Civil

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[1732] T. 29 May 2013 (CHAN Socheat), pp. 44, 58 (CHAN Socheat, her family and hundreds of other families boarded a boat in Kandal Province in the direction of Phnom Penh); CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421 (Hundreds were boarded on a barge).

[1733] T. 23 October 2012 (SOKH Chhin), p. 19; KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 5-6, ERN (En) 00422360-61; UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-6 , ERN (En) 00422351-3

[1734] DK Telegram, E3/154, 30 November 1975, p. 1, ERN (En) 00185064.

[1735] *The Khmer Rouge's Iron Grip* (Far Eastern Economic Review), E3/4441, 2 January 1976, p. 1, ERN (En) S 00005151 (According to refugees, during the last two months of 1975, 300,000 evacuees from Phnom Penh were again moved, partly by boat and train, to Battambang Province).

[1736] Sector 5 Report, E3/1181, 27 June 1977, pp. 1-2, ERN (En) 00223175-6 (The Sector 5 Committee in the Northwest Zone reported that the majority of the people in Thmar Pourk District were "post-17 April people". In Sisophon District, almost all of the 500,000 people were new people, a mixture between those liberated before and after 17 April. Of the 70,000 people in Phnom Srok District, approximately 50,000 were from Phnom Penh, while local new people consisted of more than 20,000. Before 17 April 1975, there were 150 families in Preah Net Preah District. As of 27 June 1977, there were more than 70,000 that came from Phnom Penh).

[1737] Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, p. 89, ERN (En) 00397004 (PONCHAUD wrote of "hundreds of thousands"; a 1976 news story based on refugee accounts put forward a figure of three hundred thousand; and VICKERY suggested that four hundred thousand would have been the absolute maximum, which seemed consistent with the various impressionistic refugee accounts); *See also*, Judgement Annex III – Map of Movement of the Population (Phase II), E313.3.

[1738] *Revolutionary Flag*, E3/748, October-November 1975, p. 28, ERN (En) 00495827; Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 5-6, ERN (En) 00636012-3 (The Party ordered that cooperatives be strengthened and expanded, integrating 1,000 families).

Parties indicated that, during their transfers to and from cooperatives and worksites, they saw hundreds, thousands and tens of thousands of people displaced.[1739] In 1977, KHIEU Samphan reported that irrigation projects were being implemented nationwide with between 10,000 and 30,000 workers at each site.[1740] For example, throughout 1977, between 8,000 and 20,000 people were transferred to work at the 1 January Dam Work-site;[1741] 20,000 people, some in mobile units, built the 17 January Dam; and 23,000 people constructed the 5 January and 6 January Dams.[1742] The Chamber is therefore satisfied that the intra-regional movements between around September 1975 and December 1977 were also on a massive scale. However, without further evidence as to the percentage of those moved to various cooperatives and work-sites, the Chamber can only make a very conservative estimate that a minimum of 30,000 were moved within regions during movement of the population (phase two). The Chamber again emphasises that the likely number moved far exceeds this estimate considering the geographical and temporal scope of these movements, the number of cooperatives and work-sites that existed during the DK era, and the number of workers at each cooperative and work-site.

582. It was later acknowledged in Party publications that the mobilisation of

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[1739] T. 7 February 2013 (PIN Yathay), p. 45 (In December 1975, approximately 1,000 people were moved first to Phum Prampi and then Doun Ei, Battambang Province, in January 1976); PRUM Sarun Interview Record, E3/5187, 18 June 2008, pp. 3-5, ERN (En) 00274178-80 (PRUM Sarun was sent to the Kamping Puoy work-site, Battambang Province along with tens of thousands of others from all over Battambang, for three months every year after the harvest was over); MEAS Chanthan Civil Party Application, E3/4730, 10 July 2009, pp. 6-10, ERN (En) 00427028-32 (In early December 1975, the Khmer Rouge gathered more than 200 families into the centre including LON Nol officials, soldiers and police. The next morning, 30 carriages moved them to Chom Nom union centre, Chom Nom Commune. The next day they were moved on foot to Rohart Tek village, 15 kilometres away. They were then taken to Chock Village).

[1740] *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, p. 3, ERN (En) S 00004166.

[1741] VANN Theng Interview Record, E3/5249, 8 October 2008, p. 2, ERN (En) 00231858 (An estimated 8,000 people were gathered from Kampong Cham and Kampong Thom Provinces to work at the 1 January Dam work-site which commenced construction on 1 January 1977 and was finished that same year); AU Hau Interview Record, E3/5255, 18 November 2008, pp. 3-4, ERN (En) 00250044-5 (Approximately 20,000 people from Sectors 41, 42 and 43 worked at the 1st January Dam work-site in Kampong Thom Province); *See also,* Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 240, ERN (En) 00237945 (Cooperatives in the general vicinity of the dam sent labour teams of thousands of people).

[1742] Article by F. PONCHAUD: *Kampuchea: A Revolutionary Economy*, E3/2412, 25 January 1979, pp. 3-4, ERN (En) 00598521-2; *See also,* Judgement Annex III – Map of Movement of the Population (Phase II), E313.3.

workers created "hardship" during and after movements.[1743] After being moved, people were forced to re-socialise and re-adapt to a completely new environment, and became disoriented.[1744] Children, whose normal routine was completely disrupted, lacked the ability to deal with the traumatic sights they experienced during the evacuations and with constant re-location. They found it more difficult to interact with others and to see a future. Those who lost parents suffered from long-term grief, which, for some, meant harsher treatment of their own children.[1745] Parents who lost children endured ongoing suffering. Further, 'New People' experienced a loss of identity and stigmatisation.[1746]

583. Below, the Chamber addresses the movements of the population identified in the Closing Order as movement of the population (phase two) according to the reasons and the geographical destinations alleged: the redistribution of labour from the southern provinces to the northern provinces (Section 11.2); intra-regional movements of a seasonal workforce (Section 11.3); intra-regional movements for purposes of the class struggle (Section 11.4); and movements away from the border with Vietnam (Section 11.5). The Chamber notes that it has considered in this section movements to, from and within locations not specified in the Closing Order, insofar as these movements provide context and evidence of a pattern of conduct. However, the Chamber will limit its legal findings on the crimes charged to those locations specifically identified in the Closing Order.

11.2. Transfers from South to North

584. Beginning in mid-April 1975, at least two million people were re-located from the cities to the countryside.[1747] When the rice transplanting season began in July and August 1975, their re-location was still on-going.[1748] Thus it was not possible to

[1743] *Revolutionary Flag*, E3/748, October-November 1975, p. 22, ERN (En) 00495821; *Revolutionary Flag*, E3/166, February-March 1976, p. 19-20, ERN (En) 00517831-2.
[1744] T. 5 June 2013 (CHHIM Sotheara), p. 95.
[1745] T. 5 June 2013 (CHHIM Sotheara), pp. 80-82
[1746] T. 5 June 2013 (CHHIM Sotheara), p. 82-4.
[1747] *See* Section 10: Movement of the Population (Phase One), para. 520; *Revolutionary Flag*, E3/166, February-March 1976, pp. 25-26, ERN (En) 00517837-8.
[1748] *Revolutionary Flag*, E3/166, February-March 1976, pp. 26, ERN (En) 00517838.

increase production that year.[1749] By the end of 1975, however, the Party leadership recognised that food and resources were nearly used up and therefore considered that man-power had to be re-organised.[1750]

585. Prior to 17 April 1975, Battambang Province had the best harvests in the country, regularly producing a surplus.[1751] In August 1975, the Standing Committee visited Battambang and Pursat Provinces (Northwest Zone) and observed that the 'New People' previously re-located there were experiencing food shortages.[1752] It also observed a shortage of water in Pursat Province and flooding in Battambang Province.[1753] Nevertheless, the Standing Committee considered that Battambang and Pursat Provinces (Northwest Zone) had the best paddies, fertile land, geography and therefore must receive more people.[1754]

586. The Party leadership considered that one million workers, the population of Battambang and Pursat Provinces (Northwest Zone) in August 1975, was insufficient to achieve its objectives: it was deemed necessary to increase the labour force by 400,000 to 500,000 people.[1755] This was considered a reasonable number to begin

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[1749] *Revolutionary Flag*, E3/166, February-March 1976, pp. 26-27, ERN (En) 00517838-9; Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 19, ERN (En) 00636026 (Only in May 1975 [after the planting season] had the Party begun farming. The country had just been liberated and the party had to deal with several complicated matters, namely food supply, salt, evacuation of people, housing and transportation); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 218, ERN (En) 00237923 (The December 1975 harvest had disappointed the centre).

[1750] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 9, ERN (En) 00491402.

[1751] USAID Report: *Cambodia Termination Report Vol. 1*, E3/4178, September 1975, p. 3, ERN (En) 00291324; *See also*, Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, p. 89, ERN (En) 00397004.

[1752] Standing Committee Report, E3/216, 20-24 August 1975, p. 1, ERN (En) 00850973.

[1753] Standing Committee Report, E3/216, 20-24 August 1975, p. 2, ERN (En) 00850974.

[1754] Standing Committee Report, E3/216, 20-24 August 1975, pp. 5-6, ERN (En) 00850977-8 (The Party considered that it would not be productive to send people to other zones with less fertile land); T. 13 December 2011 (NUON Chea), pp. 30-31 (The Northwest Zone had more stocks and could afford to take more people); T. 31 October 2013 (NUON Chea Final Statement), pp. 23-24; *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 230, ERN (En) 00237935 (There were too few people in the Northwest to till the fields or tame the jungle).

[1755] Standing Committee Report, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978; DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22, ERN (En) 00523590; DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, p. 25-26, ERN (En) 00104010-1 (the best equipment, resources and labour should be allocated to the Northwest).

with, as labour was still needed elsewhere.[1756] For example, people were needed in Kampong Thom (Central (old North) Zone) due to labour shortages.[1757] In Preah Vihear (Sector 103), where BOU Phat alias Hang was Secretary until at least 1978,[1758] manpower was required to build dikes and clear land.[1759] Sector 103 requested 50,000 more people, but only 20,000 were sent at first.[1760]

587. The less fertile areas, in particular the Southwest, West and the East Zones, were chosen to provide the manpower for the Sector 103, the Northwest and Central (old North) Zones.[1761] The Party leadership instructed that only those people necessary for farming these areas would remain, and the rest would be moved.[1762] The

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[1756] Standing Committee Report, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978; DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22, ERN (En) 00523590.

[1757] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 23, ERN (En) 00523591.

[1758] T. 4 September 2012 (NORNG Sophang), p. 6 (Hang was Sector 103 Secretary); PRUM Son Interview Record, E3/4606, 20 November 2009, p. 3, ERN (En) 00414070 (Hang was chairman of Sector 103 until his arrest in 1978); PRUM Sou Interview Record, E3/420, 24 November 2009, p. 3, ERN (En) 00422379 (Hang was secretary of Sector 103 until his arrest in 1978); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 (After 17 April 1975, Hang was secretary of Sector 103, until his arrest); *See also*, Standing Committee Minutes, E3/232, pp. 4-7, ERN (En) 00182631-4 (Comrade Hang reported to the Standing Committee on the situation in Sector 103, requesting and receiving instructions).

[1759] Standing Committee Minutes, E3/232, 8 March 1976, p. 5, ERN (En) 00182632.

[1760] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22, ERN (En) 00523590; *See also*, Standing Committee Minutes, E3/232, 8 March 1976, p. 7, ERN (En) 00182634 (The Standing Committee requested reports on dikes and rice production in the North Zone (including Sector 103) on a weekly basis); DK Telegram, E3/154, 30 November 1975, p. 1, ERN (En) 00185064 (On 30 November 1975, the East Zone reported to POL Pot, copying NUON Chea, concerning the transfer of 50,000 people to the North Zone at Stung Trang and Preah Prasap); T. 20 March 2012 (KAING Guek Eav), p. 38 (In November 1975, SAO Phim reported to POL Pot and NUON Chea concerning the evacuation of people rejected by KE Pauk).

[1761] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 5, ERN (En) 00523573 (In Svay Rieng, the land was not very fertile), p. 12, ERN (En) 00523580 (The West Zone had lower yields than the Southwest); Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389; *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, pp. 229-230, ERN (En) 00237934-5 (Ta Mok, Secretary of the Southwest Zone, had complained of overcrowding and the Northwest Zone had received the fewest new people after the evacuation from Phnom Penh); Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, pp. 89-90, ERN (En) 00397004-5.

[1762] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22-23, ERN (En) 00523590-1; *Revolutionary Flag*, E3/135, June 1977, p. 22, ERN (En) 00446867 (A slogan for 1977 was "Whatever is unnecessary must be removed"); MEAS Soeun Interview Record, E3/5531, 18 December 2009, p. 9, ERN (En) 00425891 (Very few people stayed in their home villages after 17

Party leadership intended that the especially productive zones would produce food and capital for other areas not favoured with fertile land.[1763]

588. Beginning in September 1975 and continuing into early 1977, hundreds of thousands of people in the Southwest, West and East Zones (including Kampong Speu,[1764] Kandal,[1765] Takeo,[1766] Prey Veng,[1767] Svay Rieng,[1768] and Kampong

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April 1975. New people did not know farming and therefore keeping them in the East Zone was not useful).

[1763] DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, p. 28, ERN (En) 00104012.

[1764] T. 29 May 2013 (THOUCH Phandarasar), pp. 4-7 (On 17 April 1975, THOUCH Phandarasar and her family were evacuated from Phnom Penh to Angk Romeas Village, Kampong Speu before being displaced again to Pursat); THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179.

[1765] T. 29 May 2013 (CHAN Socheat), pp. 42-44 (CHAN Socheat and her family were evacuated from Phnom Penh on 17 April 1975 and afterwards stayed in Kien Svay District for six months before being displaced again); T. 19 October 2012 (YIM Sovann), p. 92-94(YIM Sovann and her family were evacuated from Phnom Penh on 17 April 1975, eventually reaching Puthi Ban Commune Number 5, Kandal Province before being displaced again in early 1976); T. 30 May 2013 (SOPHAN Sovany), pp. 44-50, 52 (On 17 April 1975, SOPHAN Sovany and her family were evacuated from Phnom Penh, ending up in Roka Kaong Village, Kandal Province before being displaced again); T. 23 October 2012 (LAY Bony), pp. 96-97 (On 17 April 1975, LAY Bony and her family were evacuated from Phnom Penh stopping in various locations before ending up in Ksach Kandal District, Kandal Province. Later, they were then evacuated to Battambang); T. 24 October 2012 (LAY Bony), p. 2-3, 52(Arrived in Battambang in 1976); OR Ry Civil Party Application, E3/3967, 16 August 2009, p. 3, ERN (En) 00860730 (OR Ry and his family were evacuated from Phnom Penh in April 1975 to Ksach Kandal District, Kandal Province before being displaced again); SOURN Sophea Civil Party Application, E3/4837, 26 May 2008, pp. 2-3, ERN (En) 00891225-6 (SOURN Sophea and his family were evacuated from Phnom Penh on 18 April 1975 to Prey Veng Province and then to Kandal Province in July 1975 before being displaced again).

[1766] T. 7 February 2013 (PIN Yathay), pp. 5-6 (On 17 April 1975, PIN Yathay and his family were evacuated from Phnom Penh, stopping for extended stays in Chheu Khmau, Kandal Province (27 April 1975-July 1975) and Smar Leav, Takeo Province (July-September 1975) before being displaced again in September 1975); T. 4 December 2012 (TOENG Sokha), pp. 38-48 (TOENG Sokha and her family were evacuated from Phnom Penh on 17 April 1975 to Bati District, Takeo Province where they lived for 5 months before being displaced again in late 1975); KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-6, ERN (En) 00426475-7 (On 17 April 1975, KONG Vach and her family were evacuated from Phnom Penh (her husband had been a LON Nol Soldier and was taken away during the evacuation from Phnom Penh) to Chek Village Village, Takeo Province before being displaced again).

[1767] T. 27 May 2013 (AUN Phally), pp. 34-36 (AUN Phally and his family were evacuated from Phnom Penh on 17 April 1975 and travelled 15 days to Prey Veng Province before being displaced again in late 1976 or 1977 to Battambang); SEM Virak Civil Party Application, E3/4678, 24 March 2008, pp. 3-4, ERN (En) 00877009-10 (SEM Virak and his family were evacuated from Phnom Penh on 17 April 1975 to Chrek Khmon, Prey Veng Province before being displaced again); CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, pp. 2-4, ERN (En) 00893419-21 (CHHIT Savun and her family were moved from Ba Krong, Svay Rieng Province to Krasang, Prey Veng Province before being displaced again).

[1768] SENG Mardi Interview Record, E3/5613, 26 March 2010, p. 3, ERN (En) 00494399 (After 17 April 1975, SENG Mardi and his family were evacuated from Phnom Penh to Kien Svay, Kandal Province. Just before the harvest season in 1975, SENG Mardi and his family went to Prey Veng in order to continue to their home village in Svay Rieng Province. In Svay Rieng, SENG Mardi and his family stayed for a short time before being displaced again); PUT Pum Civil Party Application,

Cham[1769] Provinces) were displaced in a "second wave" of evacuations.[1770] In some locations, exclusively 'New People' were displaced,[1771] while in others both 'Old People' and 'New People' were transferred.[1772] Khmer Rouge officials,[1773] including

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E3/4714, 27 July 2008, pp. 4-5, ERN (En) 00434305-6 (PUT Pum and her family were evacuated from Phnom Penh on 17 April 1975 to Svay Rieng where they stayed in June 1975 before being sent to a security centre for three months. She was then assigned to Ta Chey Village, Svay Chrum District, Svay Rieng Province for three months before being displaced again).

[1769] CHUON Sam At Civil Party Application, E3/4707, 23 December 2008, p. 4, ERN (En) 00417897 (CHUON Sam At and his family were evacuated from Phnom Penh to Ak Rey Ksat District and then two months later (approximately June/July 1975) to O Raing Ov District, Kampong Cham Province before being displaced again); SAY Kanal Civil Party Application, E3/4699, 7 July 2008, pp. 7-8, ERN (En) 00414895-6 (On 17 April 1975, SAY Kanal and his family were evacuated from Phnom Penh to Prey Rumdeng, Kampong Cham Province before being displaced again); LI Him Civil Party Application, E3/3978, 12 October 2009, pp. 1-2 ERN (En) 00893433-4, (LI Him and his family were evacuated from Phnom Penh to Svay Tanan, Kampong Cham before being displaced again).

[1770] T. 19 October 2012 (YIM Sovann), pp. 98-99 (The leaders of YIM Sovann's work unit told her this was part of the second wave of evacuations); T. 2 May 2013 (LIM Sat), p. 58; DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, p. 30, ERN 00104013; *Cambodia: The New York Times Reports New and Forced Movements with a High Death Toll* (AFP), E3/4170, 21 January 1976, p. 1, ERN (En) 00519810 (Since October or early November 1976, many Cambodians were being moved from one part of the country to another, mostly Battambang Province); *Submission from the International Commission of Jurists under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1804, 16 August 1978, p. 4, ERN (En) 0087527 (Beginning in August or September 1975, the displaced population of Phnom Penh was again displaced to the Northwest); *The Khmer Rouge's Iron Grip* (Far Eastern Economic Review), E3/4441, 2 January 1976, p. 1, ERN (En) 00005151 (According to refugees, in late 1975, 300,000 evacuees from Phnom Penh were again moved, partly by boat and train, to Battambang Province).

[1771] T. 19 October 2012 (YIM Sovann), pp. 99-100 (Only 17 April people were re-located in the second evacuation); T. 30 May 2013 (SOPHAN Sovany), p. 52 (It was announced that the new people in Roka Kaong village would be moved); T. 12 December 2012 (Denise AFFONÇO), pp. 84-85 (Angkar provided a list of exclusively new people to be moved); T. 4 December 2012 (TOENG Sokha), p. 47 (The educated people, including TOENG Sokha and her family, were evacuated); T. 27 May 2013 (AUN Phally), pp. 46, 52 (All the 17 April people were evacuated, base people were not moved); T. 23 October 2012 (LAY Bony), pp. 99-100 (Only the 17 April people were evacuated from Ksach Kandal District, Kandal Province); T. 22 November 2012 (OR Ry), p. 106 (Only the new people were sent away, the base people remained); OR Ry Civil Party Application, E3/3967, 16 August 2009, p. 3, ERN (En) 00860730 (In late 1975, all the "new-comers" were evacuated to Pursat and Battambang Provinces); THENG Huy Interview Record, E3/5244, 17 September 2008, pp. 4-5, ERN (En) 00233301-2 (Most of the people evacuated from Svay Antor, Prey Veng Province were 17 April or new people); LI Him Civil Party Application, E3/3978, 12 October 2009, p. 2, ERN (En) 00893434, (Hundreds of new people were evacuated); MAN Saroeun Interview Record, E3/5258, 4 December 2008, pp. 2-3, ERN 00251699-700 (In late 1976, Khmer Rouge cadres called all the new people, including those evacuated from Phnom Penh and Svay Rieng Town, to a meeting in Svay Yea, Svay Rieng Province. They announced that, pursuant to the "Super Great Leap Forward" policy, new people had to go to Pursat. They had a list of those to be moved. 30 families, all new people, were displaced); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702 (Only 17 April people were transferred from Khnor Roka, Lvea Em District, Kandal Province); Refugee Accounts, E3/4590, p. 68, ERN (En) 00820386 (In April and May 1975, the population of a village in Sang District increased by several thousand new people. In September/October 1975, there were only 7 or 8 families left after the evacuations to the Northwest).

[1772] T. 27 May 2013 (SANG Rath), pp. 57, 64; PREAB Proeun Interview Record, E3/5132, 15 November 2007, p. 3, ERN (En) 00223190 (Old people volunteered to be transferred); Refugee Accounts, E3/4590, p. 68, ERN (En) 00820386 (Many old people were transferred).

village chiefs[1774] and Angkar,[1775] ordered people to depart or face the consequences, such as detention, re-education or future re-location.[1776] Some village chiefs and Khmer Rouge officials asked for volunteers.[1777]

589. People were given a variety of reasons for their re-location. The majority were told or believed that food in their current locations in the Southwest, West and East Zones was insufficient to feed the newcomers,[1778] there was plenty of food in

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[1773] BUT Savan SOAS Interview Record, E3/4659, 29 August 2005 p. 1, ERN (En) 00351976 (Orders came from the district to evacuate people); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (In early 1976, the Khmer Rouge village chief received written orders from his superiors to send away all the people from Phnom Penh to Battambang Province); SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 2, ERN (En) 00893411 ("Khmer Rouge people" evacuated SAN Mom and family from Kdar Village, Svay Rieng Province); Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389 (The "KR" ordered people to leave).

[1774] T. 27 May 2013 (SANG Rath), pp. 57, 64 (In late 1975, the village chief ordered SANG Rath, her husband, four sons and four or five other families to leave their village in Samraong District, Kampong Speu Province for Moung Russei District, Battambang. They requested to remain, but it was an "absolute order" and they had to go); T. 23 October 2012 (LAY Bony), pp. 99-100 (The village chief instructed the new people in Ksach Kandal District to prepare for departure); T. 24 October 2012 (LAY Bony), p. 30 (They were ordered to depart by the village chief).

[1775] T. 30 May 2013 (SOPHAN Sovany), p. 52 (By direction of Angkar they were displaced); NOB Nin Victim Complaint, E3/5423, 17 February 2009, pp. 6-7, ERN (En) 00873835-6 (In early 1976, Angkar evacuated NOB Nin and her family, along with others, from Kampong Speu Province. They were ordered to leave); KHLORK Phat Victim Complaint, E3/5467, 2 November 2007, pp. 8-9, ERN (En) 00815057-8 (Angkar told her mother and siblings to move to Pursat where rice was abundant); SAU Samit Victim Complaint, E3/5393, 16 November 2008, pp. 6-7, ERN (En) 00873802-3 (Her brother and sister were evacuated by Angkar from Kandal Province); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, pp. 6-7, ERN (En) 00873843-4 (THACH Young's older brother's family, along with many other people, were evacuated from Kandal Province by Angkar); PHAN Yim Victim Complaint, E3/5424, 17 February 2009, pp. 6-7, ERN (En) 00873874-5 (PHAN Yim and her family were evacuated from Takeo Province by Angkar).

[1776] T. 27 May 2013 (AUN Phally), pp. 45-46 (They were ordered to depart Prey Veng Province and had to obey or face the consequences; they were compelled by order of the Khmer Rouge); T. 19 October 2012 (YIM Sovann), p. 98 (They were told that if they refused to leave, they would be detained); T. 4 December 2012 (TOENG Sokha), pp. 64-66 (TOENG Sokha and others who had fled to the forest rather than be evacuated were rounded up and evacuated to the Northwest about a month later); YIM Sovann Interview Record, E3/5787, 27 August 2009, pp. 6, ERN (En) 00379314 (The 17 April people were ordered to leave. If YIM Sovann wanted to stay in Pothiban, she would have been taken to the security centre); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 6 ERN (En) 00353703 (The people were told that those who refused to go would be held accountable for their own conduct and that they would be re-educated by Angkar); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (No one was spared including small children).

[1777] T. 7 February 2013 (PIN Yathay), p. 6 (In September 1975, the village chief asked for volunteers to move from Samar Leav District, Takeo Province); PREAB Proeun Interview Record, E3/5132, 15 November 2007, p. 3, ERN (En) 00223190 (The old people volunteered to leave Kampong Cham); SENG Sokhom Civil Party Application, E3/4702, 20 May 2008, p. 7, ERN (En) 00417836 (In early 1976, Khmer Rouge soldiers asked for volunteers to go to Pursat or Battambang); SOURN Sophea Civil Party Application, E3/4837, 26 May 2008, pp. 2-3 ERN (En) 00891225-6 (The Khmer Rouge asked for volunteers to move to Battambang).

[1778] T. 23 October 2012 (LAY Bony), pp. 100-101; T. 24 October 2012 (LAY Bony), pp. 30-31 (The village chief explained that they had to go as food was insufficient in Kandal Province and was plentiful in Battambang); PREAB Proeun Interview Record, E3/5132, 15 November 2007, p. 3, ERN

Battambang[1779] and Pursat[1780] Provinces, the land was more fertile in Battambang,[1781] and/or there was insufficient manpower in Battambang and Pursat.[1782] Others were told that they were being returned to their homes.[1783] As a result, some were happy and willing to leave.[1784] Other people received no explanation.[1785] Others considered

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(En) 00223190 (The Khmer Rouge said there was plentiful rice in Pursat and Battambang while in Kampong Cham there was only thin gruel).

[1779] T. 27 May 2013 (SANG Rath), p. 65 (Khmer Rouge soldiers told SANG Rath that there was plenty of food in Battambang where she was being sent); T. 24 October 2012 (LAY Bony), p. 30 (Everyone in Cambodia was aware that Battambang was a rich Province); T. 30 May 2013 (SOPHAN Sovany), p. 52 (The Khmer Rouge said there would be more food in Battambang and Pursat); PREAB Proeun Interview Record, E3/5132, 15 November 2007, p. 3, ERN (En) 00223190 (The Khmer Rouge said there was plentiful rice in Pursat and Battambang); BUT Savan SOAS Interview Record, E3/4659, 29 August 2005, p.1, ERN (En) 00351976 (Many thought it would be easier in Battambang); SOURN Sophea Civil Party Application, E3/4837, 26 May 2008, pp. 2-3, ERN (En) 00891225-6(They thought there might be enough rice to eat in Battambang as it was known there was plenty of rice there); *See also*, Book by M. VICKERY: *Cambodia 1975-1982*, E3/1757, pp. 88-89, ERN (En) 00397003-4.

[1780] T. 19 October 2012 (YIM Sovann), p. 99; YIM Sovann Interview Record, E3/5787, 27 August 2009, p. 6, ERN (En) 00379314 (A Khmer Rouge soldier told YIM Sovann that there was a lot of rice in Pursat); THENG Huy Interview Record, E3/5244, 17 September 2008, pp. 4-5, ERN (En) 00233301-2 (Prior to the evacuation, the district committee announced at a meeting of people and local authorities that there was plenty of fruit and rice in Pursat Province).

[1781] KEANG Vannary Interview Record, E3/5310, 7 July 2009, p. 6, ERN (En) 00353486 (The Khmer Rouge told them they were being moved because the land was more fertile in Battambang).

[1782] BOTH Sot Civil Party Application, E3/4823, 4 November 2008, p. 4, ERN (En) 00840000 (The Khmer Rouge told them that there were many rice fields in Battambang, but not enough people to do the harvest); CHEA Leng Interview Record, E3/5231, 18 December 2008, p. 3, ERN (En) 00279250 (The Khmer Rouge explained that certain locations in Pursat were short of manpower); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 6, ERN (En) 00443068 (One refugee noted that Pursat and Battambang Provinces have a lot of empty land which the Khmer Rouge wanted to make productive).

[1783] T. 29 May 2013 (CHAN Socheat), p. 44 (CHAN Socheat and her family were informed by an "Angkar leader" that they would be allowed to return from Kien Svay District to Phnom Penh); CHEA Leng Interview Record, E3/5231, 18 December 2008, p. 3, ERN (En) 00279250 (They were told that they were being taken to their birth place, but were taken to Pursat instead); Refugee Accounts, E3/4590, p. 239, ERN (En) 00820557 (People were told that they were being returned to Phnom Penh where accommodations were waiting and they therefore did not need to carry anything with them), p. 247, ERN (En) 00820565 (They were told that the government had allowed the people from Battambang, Kampong Thom and Kampong Chhnang to return to their home villages. In reality, they did this in order to force people to go to Battambang Province); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 230, ERN (En) 00237935.

[1784] T. 23 October 2012 (LAY Bony), p. 101; T. 24 October 2012 (LAY Bony), p. 30 (They were happy to be transferred, even though they had no choice); T. 29 May 2013 (CHAN Socheat), p. 44 (They were happy about the prospect of returning to their homes; her father believed that the new government would need engineers like him and that life would be better in Phnom Penh); THENG Huy Interview Record, E3/5244, 17 September 2008, pp. 4-5, ERN (En) 00233301-2 (Prior to the evacuation, the district committee announced at a meeting of people and local authorities that there was plenty of fruit and rice in Pursat Province. Some old and new people volunteered, but even some who didn't volunteer were forced to go); KHLORK Phat Victim Complaint, E3/5467, 2 November 2007, pp. 8-9, ERN (En) 00815057-8 (In Kandal Province there was insufficient food. In 1976, Angkar told her mother and siblings to move to Pursat where rice was abundant. As the people were hungry in Kien Svay, they did not refuse); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 230, ERN (En) 00237935 (People were told that they would be returned to their homes in Phnom Penh, new people voluntarily abandoned the fruits of their labour in

that the proximity of the Thai border would facilitate their escape from the Khmer Rouge.[1786] Many of those who remained behind received no further information of those displaced.[1787]

590. After being displaced from their villages, people were evacuated in three stages: first, they were gathered at assembly points (Section 11.2.1); then they were transported by train or truck to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom (Central (old North) Zone) and Preah Vihear (Sector 103) (Section 11.2.2); and finally, they were transported to assigned cooperatives or work-sites (Section 11.2.3).[1788]

11.2.1. *Stage 1: Transfer to Assembly Points*

591. People were transported to assembly points by truck, boat, ox cart and on foot. The conditions of their transfer depended on the particular mode of transportation. Trucks to assembly points, including at Phnom Penh and Kampong Chhnang (West Zone), were crowded.[1789] People were constantly monitored, had no water and

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the southwest, giving up their share of the harvest, and went to the north where there was little food or shelter).

[1785] T. 22 November 2012 (OR Ry), p. 105; T. 23 November 2012 (CHAU Ny), pp. 59-60; T. 12 December 2012 (Denise AFFONÇO), pp. 85, 107 (They had no information as to the reason for their movement or their destination); Refugee Accounts, E3/4590, p. 226, ERN (En) 00820544 (With no advance warning and with no information as to their destination, they were moved to Battambang).

[1786] T. 7 February 2013 (PIN Yathay), p. 6 ERN (Fr) 00888771-2 (Considering the proximity of Battambang to the Thai border, and thus the opportunity for escape, PIN Yathay volunteered to go).

[1787] T. 19 June 2013 (NOU Mao), pp. 52-53 (NOU Mao had relatives evacuated from the Southwest Zone to Kampong Chhnang and he never learned their fate); THACH Yuong Victim Complaint, E3/5427, 19 April 2009, pp. 6-7, ERN (En) 00873843-4 (Her older brother's family, along with many other people, were evacuated to Pursat Province by Angkar. They all disappeared); KIM Bohanavuthy Victim Complaint, E3/5478, 16 September 2009, pp. 10-13, ERN (En) 00815159-62 (About October 1975, her older sister, brother-in-law and cousins were evacuated by the Khmer Rouge to Battambang Province. Thereafter, she received no information of them).

[1788] *See e.g.* T. 10 April 2013 (François PONCHAUD), pp. 61-62 (People were transported by train to Phnom Penh and then to Battambang); MEAS Soeun Interview Record, E3/5531, 18 December 2009, p. 9, ERN (En) 00425891 (The new people were sent to the river, then on motor boats to Phnom Penh and thereafter by train to Pursat and other Provinces); T. 4 July 2013 (SUM Alat), p. 50 (New people came by train and truck from Phnom Penh and were sent to various villages); *The Khmer Rouge's Iron Grip* (Far Eastern Economic Review), E3/4441, 2 January 1976, p. 1, ERN 00005151 (According to refugees, in late 1975, 300,000 evacuees from Phnom Penh were again moved, partly by boat and train, to Battambang Province).

[1789] T. 29 May 2013 (THOUCH Phandarasar), p. 7 (The Khmer Rouge boarded THOUCH Phandarasar and her family onto trucks which first went to Kampong Chhnang); THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179 (After three months, her family was taken by truck); T. 19 October 2012 (YIM Sovann), p. 99; T. 5 December 2012 (PECH Srey Phal), p. 44 (They were instructed to board a truck for Phnom Penh); T. 12 December 2012 (Denise AFFONÇO), pp. 86-87 (Armed Khmer Rouge soldiers boarded them onto trucks bound for an

insufficient food, and were not allowed to carry any belongings.[1790] People were sick on the trucks, but received no assistance.[1791] Upon arrival at various assembly points, the trucks stopped and people waited outdoors without sufficient food or water for up to a few days.[1792]

592. Some people, including the sick and injured, were evicted on foot from their villages and had to walk to train stations or markets for onward transport.[1793] Civil Party KONG Vach carried a baby in one arm, held the hands of her other children and carried a bag of clothes on her back.[1794] They had no food to eat. During a brief stop at Samraong Yaong market, KONG Vach's son, who had diarrhoea and swollen limbs, died. Khmer Rouge soldiers instructed KONG Vach to leave his body with

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assembly point in Pursat); T. 27 May 2013 (SANG Rath), pp. 58-59 (At about 5 pm, 4-5 families were crowded onto SANG Rath's truck); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (In April 1975, SEM Virak and his family were transferred from Phnom Penh, they were then evacuated to Chrek Khmom village in Prey Veng Province. In May 1976, they were transferred by boat to Phnom Penh and then by truck and by train to Battambang where his family and around 2.000 people were dispatched and sent to various districts); LI Him Civil Party Application, E3/3978, 12 October 2009, p. 2, ERN (En) 00893434; SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412 (From Neak Loeung, Kandal Province, SAN Mom and others were ordered by ten Khmer Rouge soldiers to board trucks which took them to the train station in Phnom Penh); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702 (From Ponhea Leu District, hundreds of people were taken to Damnak Smach railway station).

[1790] T. 27 May 2013 (SANG Rath), pp. 58,64-65 (Her children cried because they did not have food or water and they were not permitted to bring cooking pots or anything else with them; they were constantly monitored by Khmer Rouge soldiers); T. 12 December 2012 (Denise AFFONÇO), p. 109 (They received no food or water); SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 231, ERN (En) 00237936 (Soldiers stood guard and confiscated belongings).

[1791] T. 12 December 2012 (Denise AFFONÇO), pp. 87, 110 (They requested assistance but got no response).

[1792] T. 5 December 2012 (PECH Srey Phal), p. 44 (They were dropped at the train station where they waited for two nights); T. 19 October 2012 (YIM Sovann), p. 100 (After arriving by truck at Sampan Leu Pagoda, they stayed outdoors waiting for the train to arrive, had to drink water from a pond and were given no food); T. 27 May 2013 (SANG Rath), pp. 58-59 (They arrived at the assembly point in Pursat on National Road No. 5 in the early morning after travelling through the night from Kampong Speu; they were given some rice during the two nights they waited there); T. 12 December 2012 (Denise AFFONÇO), pp. 87-88 (They were given a can of rice but no water and waited for three days next to a railway), 108 (The place was overflowing with people from various locations waiting for onward transport); SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; Refugee Accounts, E3/4590, p. 253, ERN (En) 00820571 (They were told to board 80 Chinese-made trucks and were taken to Pratea Lang railway station).

[1793] KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-4 , ERN (En) 00426475-6; KONG Vach Civil Party Application, E3/4695, 16 February 2009, p. 7, ERN (En) 00391744; CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 6 , ERN (En) 00569478 (In the harvest season of early 1976, she and her family, including her husband and grandfather who had malaria, were told by the Khmer Rouge to pack all their belonging and prepare to leave. They carried her grandfather because he could not walk. Her husband could barely walk with a cane); SAO Thoeun Victim Complaint, E3/5436, 10 May 2009, p. 6, ERN (En) 00873857.

[1794] KONG Vach Civil Party Application, E3/4695, 16 February 2009, p. 7, ERN (En) 00391744.

them; she did not know what they did with it.[1795] KONG Vach and others were then loaded onto trucks bound for Battambang (Northwest Zone).[1796]

593. Other people were moved by ox cart to Angk Roka Pagoda on National Road No. 3.[1797] Thousands of travellers from various locations were assembled at Angk Roka.[1798] A rumour spread that NORODOM Sihanouk was returning and needed technicians, doctors, military officers and intellectuals to re-build the country.[1799] About 40 people at Angk Roka volunteered to work for the new government and were sent to Phnom Penh.[1800] They were not heard from again and later there was a rumour that they had been killed.[1801] The remaining people waited at Angk Roka for about two weeks.[1802]

594. Still other people were transferred by ox cart or on foot, under guard, to the Mekong riverside.[1803] After arriving at the river, some waited in poor conditions for as long as a week under armed guard.[1804] Many people were sick.[1805] They were then transported by boat, under armed guard,[1806] in the direction of Phnom Penh or across

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[1795] KONG Vach Civil Party Application, E3/4695, 16 February 2009, p. 7, ERN (En) 00391744; KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-6, ERN (En) 00426476-8.
[1796] KONG Vach Civil Party Application, E3/4695, 16 February 2009, p. 7, ERN (En) 00391744; KONG Vach Interview Record, E3/5590, 17 December 2009, p. 5, ERN (En) 00426477.
[1797] T. 7 February 2013 (PIN Yathay), p. 6 (PIN Yathay and his family, which consisted of 18 people, were loaded onto an ox cart).
[1798] T. 7 February 2013 (PIN Yathay), pp. 6-7.
[1799] T. 7 February 2013 (PIN Yathay), pp. 44-45.
[1800] T. 7 February 2013 (PIN Yathay), p. 45.
[1801] T. 7 February 2013 (PIN Yathay), p. 45 (Their families awaited news, but never received any).
[1802] T. 7 February 2013 (PIN Yathay), pp. 6-7.
[1803] T. 23 October 2012 (LAY Bony), p. 101(LAY Bony and others travelled to the riverside on ox carts); T. 22 November 2012 (OR Ry), p. 105 (They had to walk to Preaek Ta Meak); PUT Pum Civil Party Application, E3/4714, 27 July 2008, p. 5 ERN (En) 00434306 (They were forced to walk to Kampong Trabek District, Prey Veng Province and the next day, they were forced to walk onto Neak Leoung. They stayed there two nights before being taken by a ship to Chbar Ampov where they stayed overnight); *Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 July 1978, p. 15, ERN (En) 00087551 (A refugee reported that people were transported to the Mekong to catch a barge); CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421 (Leaving their property behind, they were transferred to Neak Loeung where they waited); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (They were escorted by a Khmer Rouge cadre to Neak Loeung where they waited until 11 pm for a ship).
[1804] T. 22 November 2012 (OR Ry), p. 106; CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421; SAN Mom Civil Party Application, E3/4992, 11 July 2009, pp. 2-3, ERN (En) 00893411-2.
[1805] T. 24 October 2012 (LAY Bony), pp. 12-13; CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421.
[1806] T. 22 November 2012 (OR Ry), p. 107 (There were two armed guards at the front of the boat and two at the rear); T. 30 May 2013 (SOPHAN Sovany), p. 52 T. 24 October 2012 (LAY Bony), pp. 3-4;

the Mekong to Kampong Thom (Central (old North) Zone).[1807] Some boats were not over-crowded and there was room to lie down.[1808] Others were covered and the people were transported in complete darkness.[1809] The Khmer Rouge did not distribute food.[1810] Some children on the boat cried because they were hungry and Khmer Rouge soldiers threatened to throw them overboard.[1811] Many people on board were ill, but the Khmer Rouge guards did not care for them.[1812] Nor was assistance provided when boats capsized in strong currents and some people drowned.[1813]

595. Some people were unloaded from boats in Kandal Province (Southwest Zone).[1814] Other boats continued to Phnom Penh where they were unloaded in front of the Royal Palace and taken to the train station where they waited for several hours.[1815] Still other boats continued past Phnom Penh.[1816] When Civil Party CHAN Socheat, her family and hundreds of other families passed the Royal Palace, one man shouted,

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LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 6-7, ERN (En) 00379159-60; SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702 (All villages in Lvea Em District, Kandal Province were evacuated by motor boats carrying hundreds of people).

[1807] T. 27 May 2013 (AUN Phally), p. 35 (One day in late 1976 or 1977, in the early morning, AUN Phally, his grandmother and others were put in a motorboat to Phnom Penh); T. 29 May 2013 (CHAN Socheat), pp. 44, 58 (CHAN Socheat, her family and hundreds of other families boarded a boat in Kandal Province in the direction of Phnom Penh); T. 19 October 2012 (YIM Sovann), p. 99 (They were taken by boat across the river); T. 22 November 2012 (OR Ry), pp. 107-108 (They were taken in the direction of Preak Pnov); SUONG Sim Interview Record, E3/4657, 9 July 2009, pp. 5-6, ERN (En) 00353702-3; CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421 (Hundreds were boarded on a barge); Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389; SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895 (They travelled by boat from Prey Rumdeng Village to Peam Chi Kang and then by car to Stoung District, Kampong Thom); *See also, Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 July 1978, p. 15, ERN (En) 00087551.

[1808] T. 24 October 2012 (LAY Bony), p. 3 (There were less than 100 people boarded onto the boat, all were from Ksach Kandal District, Kandal Province).

[1809] T. 22 November 2012 (OR Ry), p. 107.

[1810] CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 6, ERN (En) 00569478 (They were loaded onto a ship and received no food).

[1811] T. 30 May 2013 (SOPHAN Sovany), p. 52.

[1812] T. 23 November 2012 (OR Ry), p. 15.

[1813] SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412 (The current was so strong that it caused one boat in the second pair to sink and people drowned as there was no intervention by the Khmer Rouge).

[1814] T. 22 November 2012 (OR Ry), pp. 107-108 (They were unloaded in Preak Pnov); T. 27 May 2013 (AUN Phally), pp. 35-36 (They arrived in Phnom Penh at about 6 pm and were taken to a train station where they waited about an hour before boarding a train to Battambang); SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702 (They were unloaded from motor boats in Ponhea Leu District, Kandal Province where they were then transferred to trucks).

[1815] CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421.

[1816] T. 29 May 2013 (CHAN Socheat), p. 44; Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389.

"Bravo! Now we have arrived in Phnom Penh!"[1817] The Khmer Rouge soldiers called him outside and shot him.[1818] The ships continued past Phnom Penh and arrived in Kampong Chhnang (West Zone) within a day of departure.[1819] Upon arrival, some were given food and waited with other people for onward transport.[1820] Others, after disembarking from boats, were transported by truck to train stations where they waited for as long as a week under armed guard and were given rations of un-cooked rice.[1821]

11.2.2. *Stage 2: Transfer to the Northwest and Central (old North) Zones and Sector 103*

596. Khmer Rouge soldiers and officials ordered[1822] thousands of people who had been assembled at train stations in various locations, including Phnom Penh and Kampong Chhnang (West Zone), to board trains to Battambang and Pursat Provinces (Northwest Zone).[1823] There was a train each week, sometimes two per week.[1824]

[1817] T. 29 May 2013 (CHAN Socheat), pp. 44, 58.
[1818] T. 29 May 2013 (CHAN Socheat), p. 44.
[1819] T. 29 May 2013 (CHAN Socheat), pp. 44-45, 58; LAY Bony Interview Record, E3/3958, 26 August 2009, p. 6, ERN (En) 00379159.
[1820] T. 29 May 2013 (CHAN Socheat), pp. 44-45, 58 (They were given three cans of rice, one for three people, in Kampong Chhnang and waited at Lieb River Station).
[1821] SUONG Sim Interview Record, E3/4657, 9 July 2009, pp. 5-6, ERN (En) 00353702-3 (The boats stopped at Ponhea Leu where the people were transferred to trucks which took them to Damrak Smach train station. They waited at the station for one week under armed guard. They received rations of uncooked rice); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (They disembarked at Psar Tauch the day after departing from Neak Loeung and rode a truck to Psar Thmey where they waited for a train).
[1822] T. 5 December 2012 (PECH Srey Phal), p. 44 (The Khmer Rouge instructed them to board); T. 29 May 2013 (THOUCH Phandarasar), p. 32 (They had no choice but to get on the train and were pushed onto it by soldiers); T. 23 November 2012 (CHAU NY), pp. 57-58, 60, 69 (In late 1975 or early 1976, CHAU Ny and his family were forced to board a train by 10 armed Khmer Rouge soldiers); T. 12 December 2012 (Denise AFFONÇO), p. 88 (They were placed on a train); T. 4 December 2012 (TOENG Sokha), pp. 68-69 (They were loaded into the cargo wagon of a train that took them to Kouk Trom station); T. 29 May 2013 (CHAN Socheat), p. 59 (The people did not have a choice as to whether or not to take the train; they were forced by armed military personnel); T. 30 May 2013 (SOPHAN Sovany), p. 53 (They were pushed onto the train); PHAN Yim Victim Complaint, E3/5424, 17 February 2009, p. 7, ERN (En) 00873875 (They were ordered to take a train to Thebde Mountain, Koas Krala District, Battambang Province); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (They were boarded on a train at Psar Thmey at 9 pm, arriving in Pursat at 3 am).
[1823] T. 23 November 2012 (CHAU Ny), p. 86 (There were several thousand people on the train in late 1975 or early 1976 that CHAU Ny took to Battambang); T. 23 October 2012 (SOKH Chhin), pp. 13, 19-20, 22-23 (The people transported included the young, old and sick); T. 19 June 2013 (NOU Mao), pp. 48, 52 (From the Southwest Zone, people were evacuated by train to Kampong Chhnang and then Battambang); KANG Sophat Interview Record, E3/5525, 10 December 2009, p. 6, ERN (En) 00422361 (Women, children and the elderly were on the floor in each crowded wagon); T. 2 May 2013 (LIM Sat), pp. 34, 55 (The trains continued until 1979); CHHIT Savun Civil Party Application,

There were two soldiers in each train wagon, and three or four soldiers in the locomotive with the conductor.[1825] The doors of each train wagon were barred with wooden poles.[1826] The same soldiers were on the train each time from Phnom Penh and then on the return journey.[1827] The trains returned to Phnom Penh empty, but for crew members and soldiers.[1828]

597. Each train had 20-25 wagons.[1829] Each wagon had the capacity to hold as many as 40-50 people, but usually there were 20-25 people in each wagon.[1830] Some were not crowded: people could sit on the floor or remain standing.[1831] Others were over-crowded with men, women, children and the elderly.[1832] People on the trains had insufficient food and were not allowed to carry belongings.[1833] Khmer Rouge soldiers

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E3/5006, 28 July 2009, p. 4, ERN (En) 00893421; SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 5, ERN (En) 00353702.

[1824] T. 23 October 2012 (SOKH Chhin), p. 29; KANG Sophat Interview Record, E3/5525, 10 December 2009, p. 6, ERN (En) 00422361; UM Proeung Interview Record, E3/3957, 8 December 2009, p. 5, ERN (En) 00422351.

[1825] T. 23 October 2012 (SOKH Chhin), pp. 13-14, 20-21; T. 5 December 2012 (PECH Srey Phal), p. 45(There were armed Khmer Rouge soldiers in each train car); T. 23 November 2012 (CHAU Ny), pp. 59, 86-87 (Khmer Rouge soldiers escorted the train and monitored the passengers throughout the journey); T. 12 December 2012 (Denise AFFONÇO), p. 90 (The Khmer Rouge were watching over them); KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 5-6, ERN (En) 00422360-61; UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-7, ERN (En) 00422351-3 .

[1826] T. 5 December 2012 (PECH Srey Phal), pp. 44-45; T. 30 May 2013 (SOPHAN Sovany), p. 53 (When the wagon was full, they closed the door and barred it).

[1827] T. 23 October 2012 (SOKH Chhin), p. 28.

[1828] T. 23 October 2012 (SOKH Chhin), p. 28.

[1829] T. 23 October 2012 (SOKH Chhin), p. 19; KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 5-6, ERN (En) 00422360-61; UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-7, ERN (En) 00422351-3.

[1830] T. 23 October 2012 (SOKH Chhin), p. 19; KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 5-6, ERN (En) 00422360-61; UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-6, ERN (En) 00422351-3.

[1831] T. 23 October 2012 (SOKH Chhin), pp. 22-23, 39.

[1832] T. 23 November 2012 (CHAU Ny), pp. 59, 84-85 (The train was packed with men, women, children and the elderly; they sat face to face with others); T. 5 December 2012 (PECH Srey Phal), p. 47 (They loaded people into the train until each car was completely full); T. 29 May 2013 (THOUCH Phandarasar), p. 32 (The train was packed with people); T. 29 May 2013 (CHAN Socheat), pp. 58-59 (There were animals on the train as well); T. 27 May 2013 (SANG Rath), p. 59 (The train was crowded); T. 12 December 2012 (Denise AFFONÇO), p. 88 (There was nowhere to lie down as the wagons were full of goods and merchandise); UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-6 , ERN (En) 00422351-3; CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, pp. 6-7, ERN (En) 00569478-9 (The trains were packed with both animals and people); Refugee Accounts, E3/4590, p. 240, ERN (En) 00820558 (They herded people into the train like cattle, more than 150 of in each coach).

[1833] T. 5 December 2012 (PECH Srey Phal), pp. 45-46 (They were provided no food, water or clothing); T. 23 October 2012 (SOKH Chhin), pp. 23-24; T. 23 November 2012 (CHAU Ny), p. 59 (They were not given food or water); T. 12 December 2012 (Denise AFFONÇO), p. 109 (They received no food or water); T. 29 May 2013 (CHAN Socheat), p. 59 (They were not given water and

provided no assistance to sick or vulnerable people.[1834] People had to ask the soldiers to stop the train to relieve themselves.[1835] People died of exhaustion or starvation during the journey.[1836] Civil Party PECH Srey Phal recounted that Khmer Rouge soldiers threw the bodies of those who died off the train without stopping.[1837] One Civil Party, DY Roeun, spoke of children looking for their parents on the train crying continuously and saw Khmer Rouge soldiers throw some out of the window.[1838] Corpses were later seen along the tracks.[1839] Witness SOKH Chhin, a railway repairman, buried decomposing bodies found along the tracks. The area was quiet with few living in the vicinity. For this reason, he concluded that the bodies he found were people who had been on the trains.[1840]

598. In addition to trains, military and civilian trucks also transported thousands of civilians from assembly points throughout southern Cambodia to Battambang and Pursat Provinces (Northwest Zone),[1841] Kampong Thom (Central (old North)

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had to collect it themselves during stops and were given rice at only one stop); T. 19 October 2012 (YIM Sovann), p. 100 (They were given one loaf of bread when they boarded the train, which was not enough and thereafter they were given nothing); T. 30 May 2013 (SOPHAN Sovany), p. 53 (They did not have food or water and during stops drank whatever water they could find, regardless of whether it was contaminated or not); T. 10 April 2013 (François PONCHAUD), p. 60 (People were provided insufficient food and water); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 6, ERN (En) 00353702 (People drank water from puddles and ponds and were provided some bread).

[1834] T. 19 October 2012 (YIM Sovann), p. 100.

[1835] T. 5 December 2012 (PECH Srey Phal), p. 47; T. 30 May 2013 (SOPHAN Sovany), p. 53 (At one point, the Khmer Rouge ordered the women to get off the train and permitted them to defecate under armed guard. They were unable to do so as they were under gun point and therefore frightened).

[1836] T. 5 December 2012 (PECH Srey Phal), p. 46; T. 27 May 2013 (AUN Phally), p. 40 (Some people died on the journey due to the extreme conditions); T. 19 June 2013 (NOU Mao), pp. 52 (There were many casualties in the course of the evacuation), 55 (There was not enough food during the evacuation); TREH Eal Victim Complaint, E3/5324, 15 December 2009, pp. 6-7, ERN (En) 00873761-2 (His grandmother died on the train due to starvation); T. 10 April 2013 (François PONCHAUD), p. 62 (Due to the inhumane conditions on the trains, there were many casualties); Refugee Accounts, E3/4590, p. 240, ERN (En) 00820558 (Many children and old people died owing to lack of food and difficult conditions).

[1837] T. 5 December 2012 (PECH Srey Phal), p. 46.

[1838] DY Roeun Civil Party Application, E3/4656, 9 February 2008, pp. 3-4, ERN (En) 00893383-5. Stephen HEDER confirmed that DY Roeun's account reflects the conditions of transport reported to him by refugees on the Thai border (T. 15 July 2013 (Stephen Heder), pp. 91-94 .

[1839] T. 23 October 2012 (SOKH Chhin), pp. 22, 25-26T. 27 May 2013 (AUN Phally), p. 40(AUN Phally saw corpses covered in white cloth); Refugee Accounts, E3/4590, p. 67, ERN (En) 00820385 (There were corpses along the road).

[1840] T. 23 October 2012 (SOKH Chhin), pp. 22, 25-26

[1841] T. 5 December 2012 (PECH Srey Phal), p 48 (About 2,000 people were re-located from Kampong Chhnang to Pursat by truck at the beginning of 1977); T. 22 November 2012 (OR Ry), pp. 107-108 (They disembarked from boats at Preak Pnov and were then instructed by armed guards to take trucks to Pursat and Battambang); T. 7 February 2013 (PIN Yathay), p. 7 (After two or three weeks in Angk Roka, PIN Yathay, his family and approximately 2,000 others boarded 20-30 trucks for Battambang); T. 19 October 2012 (YIM Sovann), p. 99; LAY Bony Interview Record, E3/3958, 26 August 2009, pp.

Zone)[1842] and Preah Vihear (Sector 103).[1843] They were guarded and driven by armed Khmer Rouge soldiers.[1844] Khmer Rouge soldiers shot at those who tried to escape.[1845] The trucks were crowded, conditions in the trucks were poor,[1846] and those on board had to relieve themselves on the truck.[1847] Many were sick and had diarrhoea.[1848] Due to exhaustion, starvation or illness, some people died.[1849]

6-7, ERN (En) 00379159-60 (The trucks stopped at Koh Chum, Pursat Province); Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389; KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-6, ERN (En) 00426476-8; KONG Vach Civil Party Application, E3/4695, 16 February 2009, pp. 6-7, ERN (En) 00391743-4 (The Khmer Rouge forced them to board a truck from Takeo Province); KIM Heng OCP Interview Record, E3/5639, 3 August 2008, p. 4 (People were first assembled at Chrey Preah Phneou, Tram Knrar, Kampong Speu Province. After waiting for two to three days, the Khmer Rouge drove around 3,000 evacuees in 60-70 trucks, 40-50 people in each truck, to Pursat Town); SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178; KEANG Vannary Interview Record, E3/5310, 7 July 2009, p. 6, ERN (En) 00353486; UM Proeung Interview Record, E3/3957, 8 December 2009, pp. 5-6, ERN (En) 00422351-3; LOEUM Savon Interview Record, E3/5296, 18 July 2009, pp. 2-3, ERN (En) 00358146-7 (LOEUM Savon (originally a monk) was evacuated from Chantrea District, Svay Rieng Province to Pursat Province at the end of 1976); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 231, ERN (En) 00237936 (MAY Sisopha and her family were loaded onto some twenty trucks in Takeo Province and taken to Phnom Penh).

[1842] SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895 (On 17 April 1975, SAY Kanal and his family were evacuated from Phnom Penh to Prey Rumdeng, Kampong Cham Province. In December 1975, they were evacuated by the Khmer Rouge to Kompong Thom Province); Refugee Accounts, E3/4590, p. 126, ERN (En) 00820444 (In December 1975, all the new people at one area in Kampong Cham Province were transferred to Kampong Thom); *Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 July 1978, pp. 15-16, ERN (En) 0087551-2 Around December 1975, 35,000 people previously evacuated from Phnom Penh were re-evacuated from Srok Koh-Sotin, Kampong Cham Province to Kampong Thom Province).

[1843] T. 21 May 2013 (PRUM Son), pp. 12-13, 48-50 (About 3,000 evacuees were transferred by truck from Kampong Thom to Sector 103); CHHIM Sarom Victim Complaint, E3/5333, 28 February 2008, p. 6, ERN (En) 00835167 (CHHIM Sarom and her family were evacuated from Chak Angre to Kaoh Thum District, Kandal Province. In late 1975, they were evacuated to Preah Vihear Province).

[1844] T. 22 November 2012 (OR Ry), p. 110 (There were Khmer Rouge soldiers and unit chiefs; the former were armed and all wore black clothes and sandals); T. 23 November 2012 (OR Ry), p. 5 (There were four Khmer Rouge soldiers on each truck including a driver, a conductor and two armed guards in the bed of the truck); T. 4 December 2012 (TOENG Sokha), p. 49 (The driver and other soldiers were wearing black clothes); LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 6-7, ERN (En) 00379159-60.

[1845] T. 4 December 2012 (TOENG Sokha), p. 50.

[1846] T. 7 February 2013 (PIN Yathay), p. 7 (There were about 80-100 people standing in each truck; it was rainy season so they were soaked); T. 4 December 2012 (TOENG Sokha), pp. 50-51, 68 (The trucks were crowded, the roads were in poor condition and people were not allowed to get off); T. 22 November 2012 (OR Ry), p. 108 (The trucks were caged and everyone had to stand); T. 23 November 2012 (OR Ry), p. 5 (The trucks were fully loaded); KIM Heng OCP Interview Record, E3/5639, 3 August 2008, p. 4, ERN (En) 00210498 (After waiting for two to three days, the Khmer Rouge drove around 3,000 evacuees in 60-70 trucks, 40-50 people in each truck, to Pursat Town); Refugee Accounts, E3/4590, p. 239, ERN (En) 00820557 (The trucks were covered with tarpaulin); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 231, ERN (En) 00237936 (There were 200-300 people in a flatbed "with barely room to breathe").

[1847] T. 7 February 2013 (PIN Yathay), p. 7 (The people had to relieve themselves on the truck); T. 4 December 2012 (TOENG Sokha), p. 68 (The Khmer Rouge stopped to relieve themselves but no one

599. After a few days, sometimes as long as a week, the trains and trucks arrived in Battambang and Pursat (Northwest Zone),[1850] Kampong Thom (Central (old North) Zone)[1851] and Preah Vihear (Sector 103).[1852] The location in which people were unloaded was often not the place they were told they would be transferred to.[1853]

11.2.3. *Stage 3: Assignment to Work-sites and Cooperatives*

600. After being forced to disembark from trucks and trains, people were questioned about their past and they were instructed to wait, some under armed guard.[1854] Many,

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on the truck was allowed off during the day-long journey until they reached Pursat); MORM Sokly Civil Party Application, E3/5022, 26 October 2009, p. 3, ERN (En) 00950254; Refugee Accounts, E3/4590, p. 239, ERN (En) 00820557 (The lorries stopped every five or six hours for people to go to the bathroom; the trucks were covered with tarpaulin).

[1848] T. 4 December 2012 (TOENG Sokha), p. 51 .

[1849] T. 7 February 2013 (PIN Yathay), pp. 40-41 (PIN Yathay saw two people faint and subsequently die); KONG Vach Civil Party Application, E3/4695, 16 February 2009, pp. 6-7, ERN (En) 00391743-4 (Soon after the truck left Samraong Market, Takeo Province, KONG Vach's youngest daughter died from the lack of milk to feed); KONG Vach Interview Record, E3/5590, 17 December 2009, pp. 3-6, ERN (En) 00426476-8; Refugee Accounts, E3/4590, p. 126, ERN (En) 00820444 (During the journey, children died due to exhaustion or illness).

[1850] T. 7 February 2013 (PIN Yathay), pp. 7-8 (They stopped in Kampong Chhnang for a night and then reached Battambang the next day); T. 23 November 2012 (OR Ry), p. 6 (After one day on the trucks, they arrived in Pursat); T. 23 October 2012 (SOKH Chhin), pp. 13-15, 21; T. 24 October 2012 (LAY Bony), p. 52; LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 6-7, ERN (En) 00379159-60; T. 19 October 2012 (YIM Sovann), pp. 94, 101; CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, pp. 6-7 , ERN (En) 00569478-9; LI Him Civil Party Application, E3/3978, 12 October 2009, p. 2, ERN (En) 00893434; SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412 (They started the trip at night and arrived the next day); Refugee Accounts, E3/4590, p. 140, ERN (En) 00820458 (The trucks travelled non-stop for three and a half days from Phnom Penh to Battambang), p. 240, ERN (En) 00820558 (After a one day train ride, they reached Sisophon); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (They were boarded on a train at Psar Thmey at 9 pm, arriving in Pursat at 3 am).

[1851] SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895 (In December 1975, they were evacuated by the Khmer Rouge to Kompong Thom Province); Refugee Accounts, E3/4590, p. 126, ERN (En) 00820444 (In December 1975, all the new people at one area in Kampong Cham Province were transferred to Kampong Thom); *Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 July 1978, pp. 15-16, ERN (En) 0087551-2 (In addition, around December 1975, 35,000 people previously evacuated from Phnom Penh were re-evacuated from Srok Koh-Sotin, Kampong Cham Province to Kampong Thom Province).

[1852] T. 21 May 2013 (PRUM Son), pp. 12-13, 48-50; CHHIM Sarom Victim Complaint, E3/5333, 28 February 2008, p. 6, ERN (En) 00835167 (In late 1975, they were evacuated to Preah Vihear Province).

[1853] T. 7 February 2013 (PIN Yathay), p. 8; T. 24 October 2012 (LAY Bony), p. 5; LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 6-7, ERN (En) 00379159-60 (Although they were told that their destination was Battambang, they stopped at Koh Chum, Pursat Province); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, pp. 230-231, ERN (En) 00237936-7 (The Khmer Rouge tricked most people about the intention of the journey).

[1854] T. 23 October 2012 (SOKH Chhin), pp. 14-15, 21, 27, 35-36 (Upon arrival at Leach, biographies were taken and people were instructed to stay by the railroad tracks under armed guard); T. 24 October 2012 (LAY Bony), p. 31 (They were asked about their previous professions); LAY Bony Interview

already under-nourished,[1855] were provided with no water, food, hygiene facilities, hammocks or mosquito nets.[1856] Some waited for a few days or up to a week under these conditions.[1857] At other locations, ox carts driven by Khmer Rouge cadres awaited the people when they arrived.[1858]

601. Khmer Rouge soldiers and officials divided the people according to the locations where they would be sent, sometimes separating families,[1859] while some

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Record, E3/3958, 26 August 2009, pp. 6-7, ERN (En) 00379159-60; T. 7 February 2013 (PIN Yathay), p. 8 (About 2,000 people were unloaded from trucks at Leach and gather in a camp near the river to wait for onward transport the next day); T. 4 December 2012 (TOENG Sokha), pp. 62, 69 (They were dragged off the train just before night fall and were told to wait by the train tracks. They were then sent to various cooperatives after their names were registered and their occupations recorded); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 7, ERN (En) 00569479 (After disembarking from the train, their information was taken by Khmer Rouge soldiers before being assigned to work-sites); CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421 (When they arrived in Leach, Khmer Rouge chiefs were waiting and they spent the night at the train station); Refugee Accounts, E3/4590, p. 185, ERN (En) 00820503 (After arriving in Pursat, they were transported by train to Phnom Thipadei where the Khmer Rouge ordered them to disembark).

[1855] Refugee Accounts, E3/4590, pp. 70-71, ERN (En) 00820388-9 (New people arriving in Preah Vihear were under-nourished).

[1856] T. 23 October 2012 (SOKH Chhin), pp. 45-46 (People had to drink from, and bathe in, the same water in the paddy fields); T. 27 May 2013 (SANG Rath), pp. 57-60, 65 (Upon arrival in Battambang, they were given no food); T. 4 December 2012 (TOENG Sokha), pp. 70-71 (There was rain, but no shelter or food); DY Roeun Civil Party Application, E3/4656, 9 February 2008, p. 3, ERN (En) 00893384 (DY Roeun and other evacuees spent a night at a station in Pursat Province, but were given no food and were forced to sleep on the ground without mosquito nets); Refugee Accounts, E3/4590, p. 240, ERN (En) 00820558 (They were given rice and salt, but there was no camp or shelter); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 232, ERN (En) 00237937 (Thousands of new people were camped out at a train depot in Pursat Province which was littered with human faeces and swarming with flies; there was insufficient food and water and nowhere to rest but the open ground).

[1857] T. 23 October 2012 (SOKH Chhin), pp. 13-14, 22 (A few days to a week); T. 7 February 2013 (PIN Yathay), p. 8 (One day).

[1858] T. 23 November 2012 (CHAU Ny), pp. 60 (When they got off the train in Moung Russei District, Battambang, ox carts were waiting), 69 (The ox cart was driven by a man in black clothing and a scarf in a uniform similar to that worn by Khmer Rouge soldiers); T. 23 November 2012 (OR Ry), p. 6; T. 24 October 2012 (LAY Bony), p. 52; LAY Bony Interview Record, E3/3958, 26 August 2009, p. 7, ERN (En) 00379160 .

[1859] T. 19 October 2012 (YIM Sovann), p. 101 (YIM Sovann, her brother and father were all assigned to different units); T. 23 November 2012 (CHAU Ny), p. 86 (They had no choice as to their destination); T. 12 December 2012 (Denise AFFONÇO), p. 90 (Her children were sent to work-sites); KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 6-7, ERN (En) 00422361-62 (Instructions as to where people would be sent were handed down by the district committee); T. 27 May 2013 (SANG Rath), pp. 59-60 (Khmer Rouge chiefs distributed the new arrivals to various villages and her children and husband were sent to work in other units); T. 23 November 2012 (OR Ry), p. 6 (After arriving in Chamkar Ta Pour village, OR Ry was separated from his parents and siblings); T. 5 December 2012 (PECH Srey Phal), p. 48 (PECH Srey Phal and her husband were separated upon arrival); PUT Pum Civil Party Application, E3/4714, 27 July 2008, p. 5 , ERN (En) 00434306; CHHIT Savun Civil Party Application, E3/5006, 28 July 2009, p. 4, ERN (En) 00893421 (Separated from her family, the Khmer Rouge ordered CHHIT Savun to harvest rice near a bridge leading to Roleab); SUM Soeun Civil Party Application, E3/5055, 6 September 2009, p. 5, ERN (En)

were permitted to choose the commune to which they would be taken.[1860] The Khmer Rouge said they were taking some people to new cooperatives; these people disappeared.[1861] Others were transported under armed guard on foot, by truck or by ox cart to cooperatives and work-sites in Pursat Province (Northwest Zone),[1862] Battambang Province (Northwest Zone);[1863] Preah Vihear Province (Sector 103);[1864]

00893431 (They were then divided into units by an unknown militia chief. Families were separated and children were assigned to mobile units); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (They were received by armed soldiers who then took them to Bak Mekh, Boeng Khnar, Pursat); Refugee Accounts, E3/4590, p. 226, ERN (En) 00820544 (At the new location, family members were separated and children were placed in mobile units and did not hear from their families for several months).

[1860] T. 24 October 2012 (LAY Bony), p. 52; LAY Bony Interview Record, E3/3958, 26 August 2009, p. 7, ERN (En) 00379160 (They chose to remain in Koh Chum).

[1861] LAY Bony Interview Record, E3/3958, 26 August 2009, p. 8, ERN (En) 00379161.

[1862] T. 30 May 2013 (SOPHAN Sovany), pp. 53-54 (Pou Pir Cooperative, Kandieng District, Pursat Province); T. 7 February 2013 (PIN Yathay), p. 8 (They were divided into groups and moved elsewhere, some by truck, some on foot. PIN Yathay and his family travelled on foot to Veal Vong, north of Kravanh Mountain); T. 19 October 2012 (YIM Sovann), pp. 94, 101 (Kbal Chheu Puk); T. 27 May 2013 (SANG Rath), pp. 59-60 (SANG Rath was sent Voat Chas Cooperative where she worked on a dam and in the rice field); T. 5 December 2012 (PECH Srey Phal), pp. 47-48, 57 (Around the beginning of 1977, approximately 2,000 people were transferred by vehicle from Kampong Chhnang to Pursat Province where they were then assigned to two cooperatives and to transplant rice in Stung Village, Loung Cooperative); T. 29 May 2013 (THOUCH Phandarasar), p. 7 (Phnum Chonhcheang); THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179 (Transported by ox cart to Phnom Choeung Thinh); T. 29 May 2013 (CHAN Socheat), p. 45 (They were forced to walk from Au Lieb to Prey Totueng village); T. 23 November 2012 (OR Ry), p. 6 (Chamkar Ta Pour); SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 4, ERN (En) 00871751 (There were ox carts waiting for them and they were escorted on these carts by soldiers in black shirts and trousers to Ou Village); DY Roeun Civil Party Application, E3/4656, 9 February 2008, p. 3, ERN (En) 00893384 (The next morning, their bodies covered in mosquito bites, they were walked to cooperatives all over the province by armed men. DY Roeun was sent to Bak Pring Cooperative, Khnar Commune, Bakan District, Pursat Province); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 6 , ERN (En) 00353703 (Upon arrival, the people were sent to different villages. SUONG Sim was sent to Samraong, Koh Khsach Commune); SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412 (They transported from Trapeang Chong Railway Station by order of Khmer Rouge soldiers who escorted them in back and front); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN 00251700 (Bak Mekh, Boeng Khnar, Pursat); Refugee Accounts, E3/4590, p. 71, ERN (En) 00820389 (They walked to the mountains or the plains west of Pursat).

[1863] T. 5 December 2012 (PECH Srey Phal), p. 48 (Around the beginning of 1977, people were evacuated from southern Cambodia to Battambang Province); T. 23 November 2012 (CHAU Ny), pp. 61, 73 (Ta Heuy, later known as Chak Thum); T. 12 December 2012 (Denise AFFONÇO), p. 89 (They were transported on foot by Khmer Rouge village chiefs to Phnum Tralach); KANG Sophat Interview Record, E3/5525, 10 December 2009, pp. 6-8, ERN (En) 00422361-63 (Phnom Srok); KONG Vach Interview Record, E3/5590, 17 December 2009, p. 5, ERN (En) 00426477; KONG Vach Civil Party Application, E3/4695, 16 February 2009, pp. 6-7, ERN (En) 00391743-4 (Thipakdei); SEM Virak Civil Party Application, E3/4678, 24 March 2008, p. 4, ERN (En) 00877010 (They walked for a day to Kdang Ngea with about 200 people); CHEA Sowatha Civil Party Application, E3/5084, 15 January 2010, p. 7, ERN (En) 00569479 (Pras Neth Peas); LI Him Civil Party Application, E3/3978, 12 October 2009, p. 2, ERN (En) 00893434 (Ou Ta Ki); SOURN Sophea Civil Party Application, E3/4837, 26 May 2008, p. 3, ERN (En) 00891226 (Ou Ta Paong); LONG Sorn Civil Party Application, E3/4872, 9 January 2008, p. 3, ERN (En) 00842162 (In October 1976, the Khmer Rouge sent LONG Sorn to Thmei Commune, Kampot and thereafter, in December 1976, to Bak Chien, Battambang

and Kampong Thom Province (Central (old North) Zone).[1865] The cooperatives were not equipped to handle the volume of people arriving, particularly new cooperatives in the jungle.[1866] Upon arrival, belongings were confiscated and some people had to build their own shelter.[1867]

Province); SUM Soeun Civil Party Application, E3/5055, 6 September 2009, p. 5, ERN (En) 00893431 (SUM Soeun and his family were moved by train to Ta Bde Mountain where some people were unloaded before continuing onto Thma Koul); NOB Nan Victim Complaint, E3/5423, 17 February 2009, pp. 6-7, ERN (En) 00873835-6 (She did not know where in Battambang they arrived); PHAN Yim Victim Complaint, E3/5424, 17 February 2009, pp. 6-7, ERN (En) 00873874-5 (She was sent to Thmei Village, Battambang Province); Refugee Accounts, E3/4590, p. 185, ERN (En) 00820503 (About 20 Khmer Rouge lead the people to villages in Battambang), p. 240, ERN (En) 00820558 (People were taken by tractor to Phnom Srok and then by ox cart to the middle of nowhere), p. 253, ERN (En) 00820571 (People were taken by ox cart to villages in Battambang Province: they were told by the Khmer Rouge that they were being taken to assist with rice farming).

[1864] T. 21 May 2013 (PRUM Son), pp. 12-13, 48-50 (Rovieng District); CHHIM Sarom Victim Complaint, E3/5333, 28 February 2008, p. 6, ERN (En) 00835167.

[1865] SAY Kanal Civil Party Application, E3/4699, 7 July 2008, p. 7, ERN (En) 00414895 (They were brought by ox cart to Chambak Panhnha, Banteay Stoung District, Kampong Thom Province); Refugee Accounts, E3/4590, p. 126, ERN (En) 00820444; CHIN Kim Leang Supplementary Information, E3/4941, 15 June 2010, p. 1, ERN (En) 00833992 (In 1977, CHIN Kim Leang and her aunt's family were evacuated from Kampot Province to Staung District, Kampong Thom Province).

[1866] T. 21 May 2013 (PRUM Son), pp. 15-16; T. 30 May 2013 (SOPHAN Sovany), pp. 53-54 (There was nothing but forest and they had to clear the land); PHAN Yim Victim Complaint, E3/5424, 17 February 2009, pp. 6-7, ERN (En) 00873874-5 (They were ordered to take a train to Thebde Mountain, Koas Krala District, Battambang Province in the thick forests. She was then sent to Thmei Village, Battambang Province).

[1867] T. 24 October 2012 (LAY Bony), p. 13 (At Kaoh Chum Cooperative, they had to build their own make-shift shelter with poles and sticks); T. 7 February 2013 (PIN Yathay), p. 28 (Veal Vong was in the jungle at the base of Kravanh Mountain and they had to build their own shelter; they were provided no tools); T. 29 May 2013 (CHAN Socheat), p. 45 (At Prey Totueng village in the jungle, they had to build their own house); T. 29 May 2013 (THOUCH Phandarasar), p. 7 (In Phnum Chonhcheang, they had to build their own shack); THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179; T. 30 May 2013 (SOPHAN Sovany), pp. 53-54 (In Pou Pir Cooperative, Kandieng District, Pursat Province they had to build their own shelter); SUONG Khit Civil Party Application, E3/4734, 15 June 2009, p. 4, ERN (En) 00865178 (La Boeng Svay Village, Battambang Province, was a far-flung area where their belongings were confiscated and placed into collective ownership and they had to build their own shelter); PUT Pum Civil Party Application, E3/4714, 27 July 2008, p. 5, ERN (En) 00434306 (They had to build their own accommodation); Refugee Accounts, E3/4590, p. 140, ERN (En) 00820458 (After arriving in the jungle, they had one day to build a hut out of tree branches and the next day were sent to farm), p. 185, ERN (En) 00820503 (In Chhiv village, they were ordered to build a house and were given 5 days to do so); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 6, ERN (En) 00443068 (The Khmer Rouge often deposited people in a field or forest in the middle of nowhere, telling them to build their village. One refugee recalled that upon arrival in Battambang in October 1975, the people were divided into units of 50-60 people, each became a new village); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 233, ERN (En) 00237938.

11.3. Production Targets: Transfers within the Northern, Southern and Central Regions

602. In addition to the large-scale re-distribution of manpower from the over-crowded southern provinces to Battambang and Pursat (Northwest Zone), Kampong Thom (Central (old North) Zone) and Preah Vihear (Sector 103), people were also allocated to labour within regions, depending on the season.[1868] The Party leadership believed that this re-organisation would address shortages of water and food and in turn, benefit the livelihood of the people.[1869] By advancing agricultural production and increasing the rice crop, the Party leadership considered that it could acquire the capital necessary to purchase the livestock, tools, machinery, technology and supplies necessary for the country to evolve into a modern agricultural economy within 10-15 years, and later an industrial state.[1870] However, in the meantime, as manpower and land were the only capital available,[1871] the former had to be allocated strategically.[1872]

[1868] Refugee Accounts, E3/4590, p. 121, ERN (En) 00820439 (Whenever there were no mass forced transfers, there were always smaller forced transfers within a same area – one month here, two months there – and those in a position of authority decided about this on the spot. People were considered prisoners of war).

[1869] *Revolutionary Flag*, E3/170, October-November 1977, p. 6, ERN (En) 00182553.

[1870] Standing Committee Report, E3/216, 20-24 August 1975, p. 5, ERN (En) 00850977 (The Party's direction was to diversify crops and build up the country); DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, p. 48, ERN (En) 00104022; *Revolutionary Flag*, E3/762, August 1976, pp. 5-6, ERN (En) 00486746-7 (The Party fundamentally relied upon agriculture to get the agricultural capital to strengthen and expand industry, advance to modern agriculture within 10-15 years and purchase machinery).

[1871] Standing Committee Report, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978; DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 8, ERN (En) 00523567, (Without more people, more machinery was necessary. New people were to be split up, not allowed to concentrate, trained and educated); Decisions of Party Committee Conference of All Divisions, E3/790, 10-14 July 1976, p. 6, ERN (En) 00714791 (Cattle were only able to plough 30% of the soil, so manpower had to be allocated to loosen the rest. Without cattle or tractors, manpower was the foundation); Refugee Accounts, E3/4590, p. 67, ERN (En) 00820385 (They were taking advantage of the "human cattle").

[1872] *Revolutionary Flag*, E3/5, August 1975, p. 27, ERN (En) 00401503 (The Party emphasised that there was plenty of good land, both previously worked and yet to be worked, and there remained only the matter of correctly preparing the forces to use that good land well and to the maximum); Standing Committee Report, E3/216, 20-24 August 1975, pp. 5, ERN (En) 00850977 (The workforce had to be allocated to those areas with free land to plant; the workforce had to be allocated to any place with more potential); DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 6, ERN (En) 00523574 (Manpower had to be assembled wherever the soil was good and fertile); *Revolutionary Flag*, E3/11, September 1977, p. 42, ERN (En) 00486253 (Man was the

603. There was a mobile unit in each cooperative designed for regular movement; such units were always on stand-by.[1873] The Party leadership considered that only when cooperatives were expanded from 10 or 20 families to 1,000 families, and thus able to provide manpower for all activities, would it be possible to avoid further population movements.[1874]

11.3.1. *The 1976 Goal: Three Tonnes per Hectare*

604. Between September and October 1975, the Standing Committee met to discuss policies to defend and build the country.[1875] In November 1975, the First Nationwide Party Economic Congress set out a plan that would transform the country's degraded agricultural system into a modern agricultural system in 10-15 years.[1876] The Party leadership determined that it would expand cooperatives; build dikes, canals and dams; and focus on the most fertile land to achieve yields of three tonnes per hectare by 1976.[1877] The minutes of a meeting held on 8 March 1976, at which KHIEU

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determining factor in production); Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/819, 27 June 1976, p. 6, ERN (En) 00543727 (In order to meet goals for production, the Party considered that the workforce must be "properly manipulated". The work force should not be scattered, but should work a targeted area); Decisions of Party Committee Conference of All Divisions, E3/790, 10-14 July 1976, pp. 5-6, 8, ERN (En) 00714790-1, 00714793 (Manpower must be gathered to attack fertile land and continue work on dams, canal and dikes).

[1873] T. 28 March 2012 (KAING Guek Eav), p. 17 (Mobile units were the core force in each cooperative and were on the offensive in constructing dams and dikes and farming); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 6, ERN (En) 00443073 (Mobile groups were designated for hard labour far away from their village. They slept at the work-site); Article by F. PONCHAUD: *Kampuchea: A Revolutionary Economy*, E3/2412, 25 January 1979, p. 12, ERN (En) 00598530 (Mobile troops moved based on regional requirements and were tasked as a matter of priority with major construction works).

[1874] *Revolutionary Flag*, E3/748, October-November 1975, p. 28, ERN (En) 00495827.

[1875] Standing Committee Minutes, E3/182, 9 October 1975, p. 13, ERN (En) 00183405 (On 9 October 1975, the Standing Committee held a meeting at which KHIEU Samphan and NUON Chea were present. The Standing Committee affirmed that the general line was to build and defend the country, relying on and organizing the force of the masses); IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 2-3, ERN (En) 00417600-1 (In September 1975, there was a Standing Committee meeting about how to defend the country. Agriculture and water supply were discussed).

[1876] *Revolutionary Flag*, E3/748, October-November 1975, pp. 9-12, ERN (En) 00495808-11; *Revolutionary Flag*, E3/760, June 1976, p. 16, ERN (En) 00509619; DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 1, ERN (En) 00523569 (Such focus was necessary in order to defend the country, as well as to permit the country to eventually modernise agriculture).

[1877] DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, pp. 6-7, ERN (En) 00523574-5 p. 1, ERN (En) 00523569 (This goal required proper division of labour forces to avoid inactivity and to ensure that projects were accomplished consecutively); *Revolutionary Flag*,

Samphan and NUON Chea were present,[1878] indicate that 30 percent of the 1976 goal had already been reached and attributed this success to careful and detailed planning.[1879] By May 1976, the rice fields had been ploughed at least once, and sowing and transplanting had begun.[1880]

605. The Party leadership began to realise, however, that they faced difficulties in reaching the goal of three tonnes per hectare by 1976. After being appointed Minister of Social Affairs in early 1976, IENG Thirith travelled to observe the living conditions of the people throughout Cambodia. She reported back to the leaders (including the "Prime Minister") that people in Battambang and Pursat Provinces (Northwest Zone) were ill, had to work far from their villages and had no homes.[1881] Similar living conditions were also reported in Preah Vihear (Sector 103) where 40 percent of the work force was lost due to illness.[1882] At various construction sites, it was reported that progress, without the use of machinery or tools, was slow.[1883] The Ministry of Commerce reported that, in early 1976, some labour forces were not allocated strategically, for example those brought to dig ponds, raise tortoises and

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E3/139, November 1976, p. 5, ERN (En) 00455282 (In 1976, the most important work was increasing the production of rice, the goal was three tonnes per hectare); Standing Committee Meeting, E3/230, 22 February 1976, p. 1, ERN (En) 00182546 (On 22 February 1976, the Standing Committee proposed pushing the work on Kirirom Dam further); *Revolutionary Youth*, E3/734, July 1976, pp. 3-4, ERN (En) 00360778-9 (Since April 1975, the Party had two new objectives: defending and building the country. To achieve these objectives and ensure the livelihood of the people, three tonnes per hectare were necessary); *Revolutionary Flag*, E3/760, June 1976, pp. 3-4, ERN (En) 00509606-7 (Manpower must be assigned based on need and party strategy); *Revolutionary Flag*, E3/166, February-March 1976, pp. 22, 28, ERN (En) 00517834, 00517840 (Manpower must not be too concentrated at one location and must be transferred to assist other cooperatives in need); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 14, ERN (En) 00443076(Cambodia propaganda demonstrated that the highest priorities for the Party leadership were rice farming and canal and dike construction).

[1878] Standing Committee Minutes, E3/232, 8 March 1976, p. 1, ERN (En) 00182628.

[1879] Standing Committee Minutes, E3/232, 8 March 1976, p. 5, ERN (En) 00182632; *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 9, ERN (En) 00491402 (The reorganization was planned and systematic in 1976).

[1880] Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 19, ERN (En) 00636026.

[1881] IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 25, ERN (En) 00182322.

[1882] Standing Committee Minutes, E3/232, 8 March 1976, p. 3, ERN (En) 00182630.

[1883] Standing Committee Minutes, E3/237, 10 March 1976, p. 1, ERN (En) 00543729 (On 10 March 1976, the Ministry of Public Works held a meeting at which it discussed the slow progress of Kirirom Dam (they had to break the stone by themselves) and Chroy Changvar Bridge (the lack of a crane that could lift the bridge's materials of over 100 tons was a problem)).

grow crops on infertile land.[1884]

606. In June 1976, at a Health and Social Affairs meeting at which KHIEU Samphan was present,[1885] the Party leadership reiterated that unless three tonnes per hectare were achieved, the Party would not be able to feed the people or defend the country.[1886] The same month, a Party representative instructed a West Zone assembly to allocate manpower strategically on a countrywide basis according to need.[1887] In July 1976, the Commerce Ministry reported that it had contributed to national protection and development in providing manpower for agricultural production.[1888]

607. Beginning in late 1975 and throughout 1976, a seasonal workforce consisting of tens of thousands of people was displaced within and between Battambang and Pursat Provinces (Northwest Zone);[1889] within and between Kampot,[1890] Takeo[1891] and

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[1884] Commerce Ministry Report, E3/1159, 25-26 July 1976, p. 5, ERN (En) 00701591.

[1885] Standing Committee Minutes, E3/226, 10 June 1976, p. 1, ERN (En) 00183363.

[1886] Standing Committee Minutes, E3/226, 10 June 1976, p. 7, ERN (En) 00183369; *Revolutionary Flag*, E3/759, April 1976, pp. 18-20, ERN (En) 00517866-8; *Revolutionary Youth*, E3/733, May 1976, pp. 3-5, ERN (En) 00397870-2 (In May 1976, the Party explained that three tonnes per hectare would sort out popular living standards, build and defend the country).

[1887] DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, pp. 14-15, 19, 23-25 ERN (En) 00104005-6, 00104007-8, 00104009-10(Labour had to be organized throughout the country to ensure that both front and rear areas had adequate forces); *Revolutionary Flag*, E3/4, July 1976, pp. 8-12, ERN (En) 00268920-24 (Storming attacks had to be launched following the most effective and correct lines of action including strengthening and expanding the cooperatives, focusing on water, and fulfilling three tonnes of rice per hectare by way of careful and consistent planning and organization); *Revolutionary Flag*, E3/759, April 1976, pp. 18-20, ERN (En) 00517866-8 (It was necessary to build up the dikes, canals and dams throughout the country); Standing Committee Minutes, E3/237, 10 March 1976, p. 2, ERN (En) 00543730 (It was necessary to mobilize in order to expand roads and bridges); East Zone Report, E3/1218, 15 November 1976, p. 1, ERN (En) 00548800 (On 15 November 1976, the East Zone received a report concerning, *inter alia*, the gathering of mobile work forces to intensify rice harvests at the places where there was much ripening rice); *Revolutionary Flag*, E3/762, August 1976, p. 15-16, ERN (En) 00486756-7 (Water was a priority and forces had to be gathered from many communes to sort out water in any other communes or districts).

[1888] Report on the Meeting of Commerce Ministry, E3/1110, 25-26 July 1976, pp. 1-2, ERN (En) 00583829-31; Commerce Ministry Report, E3/1159, 25-26 July 1976, p. 2, ERN (En) 00701588 (During a Ministry of Commerce meeting in late 1976, it was reported that the Ministry of Commerce carried out a shock assault resolutely to achieve the three tonne-per-hectare rice production and build new dikes).

[1889] Those re-located within the Northwest Zone included those residing in the Northwest before April 1975, as well as those re-located from southern Cambodia beginning in September 1975: T. 7 February 2013 (PIN Yathay), p. 45 (In December 1975, a Khmer Rouge soldier arrived in Veal Vong, Pursat Province, and asked for volunteers to move. Approximately 1,000 people volunteered. They were moved first to Prum Prampi and then Doun Ei, Battambang Province, in January 1976); AUN Phally Civil Party Application, E3/5740, 11 January 2010, p. 4, ERN (En) 00938145 (Children were gathered in Battambang to work at Phnom Ta Cheak Chet work-site); SOK Moeun Civil Party Application, E3/4918, 6 January 2008, p. 2, ERN (En) 00893389 (SOK Moeun and family were evacuated on 19 April 1975 from Kaoh Khsach to Ta Yuk, both in Bakan District, Pursat Province. In late 1975, they

Prey Veng,[1892] Kandal,[1893] Svay Rieng,[1894] and Kampong Speu[1895] Provinces (Southwest, West and East Zones); and to Kratie Province (Sector 505).[1896] YONG Yem was Secretary of Sector 505 from 1971 to 1976. Between 1976 and 1978, and

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were evacuated to Russei Kaun Khla and then to Samraong Yea Cooperative, Thmei Village, Khnar Commune, all in Bakan District, Pursat Province); MOUR Setha Interview Record, E3/5311, 19 August 2009, pp. 3-7, ERN (En) 00373362-6 (MOUR Setha (whose father was judge in the LON Nol regime) and her family were evacuated from Trapeang Chorng, Khnar Commune, Bakan District, Pursat Province to Preah Chambak, Pursat Province in April 1975. Five or six months later (about September or October 1975), MOUR Setha, her two sisters and two brothers were assigned by the Khmer Rouge to a mobile unit at the front line in Moung Russei District, Battambang where they dug canals at the 17 January Dam work-site); PRUM Sarun Interview Record, E3/5187, 18 June 2008, pp. 3-5, ERN (En) 00274178-80 (PRUM Sarun was sent to the Kamping Puoy work-site, Battambang Province along with tens of thousands of others from all over Battambang, for three months every year after the harvest was over); Refugee Accounts, E3/4590, p. 243, ERN (En) 00820561 (The Khmer Rouge separated families, sending fathers to work in the forests for three months and youth and children to build dikes and dams at various locations, some far away from home); Article by UTARA N.: *Deprivation of Rights*, in Magazine of Documentation Center of Cambodia, E3/1800, July 2003, p. 56, ERN (En) 00080450 (After being evacuated to Preah Net Preah, Battambang in the rainy season of 1975, people were moved from district to district. In mid-1976, people were sent to work at Kauk Tayou, while others were imprisoned at Serey Sophon).

[1890] YUOS Phal Interview Record, E3/4611, 12 December 2009, pp. 3-4, ERN (En) 00455376-7 (On 17 April 1975, YUOS Phal (a policeman) was evacuated from Phnom Penh, ending up first in Kampong Cham, then Takeo Province and finally La Ach Sva, Kampot Province. In late 1975, he and his family were transferred to Trapeang Tum, Roneam Commune where he worked with a mobile unit for three years); LONG Sorn Civil Party Application, E3/4872, 9 January 2008, p. 3, ERN (En) 00842162 (After 17 April 1975, the Khmer Rouge sent LONG Sorn from Takeo Province to Svay Rieng, Kampot Province. In October 1976, the Khmer Rouge sent LONG Sorn to Thmei Commune, Kampot); CHIN Kim Leang Supplementary Information, E3/4941, 15 June 2010, p. 1, ERN (En) 00833992.

[1891] YANN Nhar Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (YANN Nhar and her family were sent from Phnom Penh to Au Ansa Village, Kiri Vong District, Takeo Province after 17 April 1975. By 1976, they were moved to Svay Sa Village, Kiri Vong District, Takeo Province).

[1892] LY Mat Civil Party Application, E3/5053, 12 August 2009, pp. 2-3, ERN (En) 00840069-70 (In April 1975, LY Mat and his family were moved from Mukh Kampoul District to Ksach Kandal District, both in Kandal Province. Three months later, he was transferred to Mimol, Tonle Tauch, Sar Preah Chan District, Prey Veng Province).

[1893] T. 6 December 2012 (KIM Vanndy), pp. 11-12 (In 1976, a meeting was called for all the 17 April people in one district in Kandal Province. They were instructed to pack their belongings so that they could be transferred to a work-site at Prey Phdau Dam. At the work-site, they were forced to carry soil, dig dirt and build a dam); SAU Samit Victim Complaint, E3/5393, 16 November 2008, pp. 6-7, ERN (En) 00873802-3 (SAU Samit was evacuated from Chbar Ampov to Svay Proteal, bordering Sang District, Kandal Province in 1976. In late 1976, SAU Samit was evacuated from Svay Proteal to Prasat Tuyau, Kaoh Thum District, Kandal Province).

[1894] REACH Yen Civil Party Application, E3/5019, 16 October 2009, pp. 1-2, ERN (En) 00893424-5 (REACH Yen was transferred twice within Rumduol District and to Samraong District, both in Svay Rieng Province).

[1895] SUM Soeun Civil Party Application, E3/5055, 6 September 2009, p. 4, ERN (En) 00893430 (SUM Soeun and his brother were assigned to build dikes at Boeng Kak, Kampong Os Commune, Ponhea Leu District).

[1896] HENG Lai Heang Interview Record, E3/436, 23 November 2009, pp. 8-9, ERN (En) 00414568-9 (Before HENG Lai left Kratie Province, people from other sectors were transferred to Kratie to build roads and dams and farm rice).

BORN Nan *alias* Yi was Secretary.[1897]

608. From season to season, these people, in particular mobile units specifically designated in each cooperative, were moved, often on foot, under guard and with insufficient food or accommodation,[1898] to farm and build infrastructure, including dams and irrigation systems.[1899] Angkar told people that the reason for their displacement was that manpower was insufficient at their destinations.[1900]

[1897] T. 19 June 2012 (YUN Kim), p. 25 (Yem was secretary of Sector 505 from 1971 to 1976 and then, from 1976 to 1978, Yi was secretary); SENG Soeun Interview Record (DC-Cam), E3/5643, p. 21, ERN (En) 00753834 (YONG Yem was secretary of Kratie from before 1975 until his appointment as ambassador to Korea. Then Yi was in charge); *See also,* DK Telegram, E3/501, 11 May 1977, p. 1, ERN (En) (A telegram from Yi to M-870 concerning people who trespassed into Region 505 without permission); *Chen Yung-kuei's Visit to Cambodia* (in SWB Collection), E3/1405, 3 December 1977, p. 1, ERN (En) S 00008330 (YONG Yem was identified as an embassy counsellor).

[1898] T. 27 May 2013 (AUN Phally), pp. 46-47; Refugee Accounts, E3/4590, p. 186, ERN (En) 00820504 (People were forced to walk; the distance would not have posed a problem except they were given no food to eat), p. 311, ERN (En) 00820629 (The Khmer Rouge made no efforts to provide mobile units with shelter, food or medicine); Council of Ministers Meeting Minutes, E3/794, 31 May 1976, p. 9, ERN (En) 00182679 (There were insufficient shelters for mobile units and those shelters that did exist were only temporary); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, pp. 10-11, ERN (En) 00443072-3 (Mobile units, including in Phnom Srok, stayed under armed guard in the fields or at their work-sites, including canal construction sites during the rainy season. As they stood in water all day, some died. If labour was required somewhere else, people were moved).

[1899] Council of Ministers Meeting Minutes, E3/794, 31 May 1976, p. 8, ERN (En) 00182678 (At work-sites throughout the Northwest, Southwest, East and West Zones, thousands of people were collected to build canals), p. 12, ERN (En) 00182682 (Some mobile units focused on rice production and were sent in the dry season to work on railroad repairs); BIEAN Sareth Civil Party Application, E3/4755, 18 January 2009, p. 4, ERN (En) 00864551 (BIEAN Sareth was moved to various cooperatives as part of a mobile unit in Battambang Province. He was moved to transplant and harvest rice and work on dikes as the season changed); ENG Hong Sum Civil Party Application, E3/5091, 13 November 2009, p 8, ERN (En) 00569691 (When the rice was ripe in 1976, they were moved again to Krang Svat Village, Battambang Province); SOK Moeun Civil Party Application, E3/4918, 6 January 2008, p. 4, ERN (En) 00893391 (In June 1976, SOK Moeun was sent to do rice farming at Svay Doun Kaev, Bakan District, Pursat Province to transplant rice); EL Yas Civil Party Application, E3/4975, 6 February 2008, pp. 3-4, ERN (En) 00871631-2 (After being re-located within Pursat Province in 1975, EL Yas and her family were sent to Chonlong Village, Kbal Trach Commune, Krakor District, Pursat Province. As soon as the rainy season rice harvest was complete, they were ordered to do dry rice season farming in Russei Muoy Roy Kum, Bakan District, Pursat Province); PRUM Sarun Interview Record, E3/5187, 18 June 2008, pp. 3-5, ERN (En) 00274178-80 (PRUM Sarun was sent to the Kamping Puoy work-site, Battambang Province along with tens of thousands of others from all over Battambang, for three months every year after the harvest was over); Refugee Accounts, E3/4590, p. 82, ERN (En) 00820400 (After the harvest, people were forced to go elsewhere to start from scratch), p. 187, ERN (En) 00820505 (In September/October 1975, all the boys and girls were withdrawn as part of an "elite" force to build a dike at Damnak Siem), p. 243, ERN (En) 00820561 (Youths were sent to harvest crops or build waterworks far away from their home cooperatives); UON Yeun Victim Complaint, E3/5394, 24 December 2008, pp. 6-7, ERN (En) 00872930-1 (He was assigned to a mobile unit and was transferred to Popeal Khae, Kien Svay District, Kandal Province where he was sent out to build dams and irrigation systems); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 241, ERN (En) 00237946 (People in the Northwest were moved from project to project and then back to the rice fields); Article by F. PONCHAUD: *Kampuchea: A*

609. After mobile units and others subject to seasonal re-location were assigned to new locations, many who remained behind received no further information concerning their whereabouts.[1901] Some of those moved later attempted to return to the cooperatives from which they came.[1902] Civil Party AUN Phally explained that some who attempted to escape were chased by Khmer Rouge soldiers. He heard their screams after they were caught, although he did not specify their fate.[1903]

11.3.2. *The 1977 Goal: Three or Six Tonnes per Hectare*

610. In an article published in the *Revolutionary Flag* dated June 1976, the Party leadership appears to have realised that it was not possible to carry out all planned work in 1976. is the article noted that manpower had not been distributed with proper discernment: sometimes all people were sent to work-sites, but no one (elderly people or children) was left behind to grow vegetables or other crops. In the same article, it is requested that guidelines on how to use manpower be better understood in the future and that their implementation change in 1977.[1904] On 17 and 18 November 1976, the Party leadership held its Second Nationwide Economics Conference in which it adopted the specific 1977 Plan.[1905] This set a new target of three tonnes per hectare or, six tonnes per hectare in those areas that could produce both a rainy and dry season crop.[1906] The Party leadership intended that manpower be sent first to areas where

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Revolutionary Economy, E3/2412, 25 January 1979, p. 5, ERN (En) 00598523 (PONCHAUD noted that while one part of the population was engaged in massive water projects, another part was assigned to clear forests. In 1976, a significant number of those sent to work virgin lands were sent back to traditionally cultivated lands), p. 13, ERN (En) 00598531 (In the dry season, a large proportion of cooperative workers were sent to construction sites).

[1900] KEO Savoeun Victim Complaint, E3/5338, 14 March 2008, pp. 7-8, ERN (En) 00874113-4 (He was put in a mobile unit and made to build dams and dig canals at Prey Moan and Daeum Kor Bei Daeum).

[1901] DY Roeun Civil Party Application, E3/4656, 9 February 2008, p. 3, ERN (En) 00893384 (In Kandal Province in early 1976, DY Roeun's parents and three siblings were transferred from Sang District, Kandal Province to Bati District, Takeo Province. She had no further information of them); Refugee Accounts, E3/4590, p. 226, ERN (En) 00820544 (At a new location, family members were separated and children were placed in mobile units and did not hear from their families for several months); MAN Saroeun Interview Record, E3/5258, 4 December 2008, p. 3, ERN (En) 00251700 (Some sent to harvest rice disappeared forever).

[1902] T. 27 May 2013 (AUN Phally), pp. 40-41; AUN Phally Civil Party Application, E3/5740, 11 January 2010, p. 4, ERN (En) 00938145.

[1903] T. 27 May 2013 (AUN Phally), p. 40.

[1904] *Revolutionary Flag*, E3/760, June 1976, pp. 24-25, ERN (En) 00509627-8 (Fr) 00487775-6.

[1905] *Revolutionary Flag*, E3/139, November 1976, p. 3, ERN (En) 00455280.

[1906] *Revolutionary Flag*, E3/742, April 1977, pp. 3-4, ERN (En) 00478494-5.

there was sufficient water and fertile land.[1907] Further, in the face of persistent drought,[1908] whenever there was free manpower, it was to be assigned to build dikes and canals.[1909] In a speech commemorating the second anniversary of the liberation of Phnom Penh, KHIEU Samphan declared that irrigation projects were being built by "progressive corps" throughout the country. He reported that each construction site had between 10,000 and 30,000 workers.[1910]

611. In 1977, population movements were again reported in Battambang and Pursat Provinces (Northwest Zone).[1911] From Thkaol, Pursat Province, people were moved to Boeng Kol, Pursat Province to farm.[1912] Others in Pursat Province were assigned to mobile units and transferred to new locations depending on the season.[1913] Still others

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[1907] Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 19-20, ERN (En) 00636026-7(The work-force had to be transferred carefully and based on needs), pp. 34-36, ERN (En) 00636041-3; *Revolutionary Flag*, E3/742, April 1977, p. 12, ERN (En) 00478503 (To achieve three and six tonnes per hectare in 1977, it was necessary to gather the physical forces); *Revolutionary Flag*, E3/135, June 1977, p. 18, ERN (En) 00446863 (Mobile units could be assigned anywhere to build reservoirs, plant potatoes, bananas, etc. In June 1977, however, the Party noted that the use of these forces remained inappropriate with some forces unused), pp. 21-22, 35, ERN (En) 00446866-7, 00446880 (It was imperative to distribute manpower properly following the action lines, meaning any work that was not yet necessary must be left for a while. Any manpower not required must all be pulled out), p. 22, ERN (En) 00446867 (Unnecessary manpower must be re-assigned to farming); CHEA Sim Interview by Stephen HEDER, E3/1568, 3 December 1991, p. 3, ERN (En) 00651864 (There were orders from the centre that young men and women should be gathered to establish camps and grow rice on that land which could produce six tonnes per hectare).

[1908] *Revolutionary Flag*, E3/743, July 1977, pp. 3, 5, ERN (En) 004716158, 00476160 (In April 1977, the Party instructed that it was imperative to round up manpower and use it strategically on front and rear battlefields, as well as transform the state of drought by creating waterworks and crops); *Revolutionary Flag*, E3/170, October-November 1977, p. 28, ERN (En) 00182575 (In 1977, there was "drought and more drought" and the dams, canals, reservoirs and dikes remained a priority).

[1909] Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 20, 34-36, ERN (En) 00636027, 00636041-3; *Revolutionary Flag*, E3/742, April 1977, p. 12, ERN (En) 00478503; *Revolutionary Flag*, E3/135, June 1977, p. 18, ERN (En) 00446863; *Revolutionary Flag*, E3/11, September 1977, p. 50, ERN (En) 00486261 (The Party applauded irrigation efforts resulting in dams at Chinit Stream, Pursat Stream, Battambang Stream and others).

[1910] *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, p. 3, ERN (En) S 00004166 (He also noted that everything is done without machines at these work sites).

[1911] *Submission from the International Commission of Jurists under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1804, 16 August 1978, p. 4, ERN (En) 0087527.

[1912] LAY Bony Interview Record, E3/3958, 26 August 2009, p. 10, ERN (En) 00379163 (In 1977, after being "re-fashioned" at Thkaol, Pursat Province, LAY Bony and others were transferred to Boeng Kol, Boeng Khnar Commune, Bakan District, Pursat Province to farm).

[1913] SAM Pha Civil Party Application, E3/5005, 26 July 2009, pp. 4, ERN (En) 00871751 (In 1977, SAM Pha was evacuated by Angkar to a river to look for fish and when the water became low, to do dry season rice farming); EL Yas Civil Party Application, E3/4975, 6 February 2008, pp. 3-4, ERN (En) 00871631-2; SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412.

were transferred to work-sites or factories in Battambang Province (Northwest Zone).[1914] Some transferred at the end of 1977 disappeared en route.[1915]

612. Between December 1976 and December 1977, mobile units were also sent to build dams in Kampong Thom and Kampong Cham (Central (old North) Zone) and Kampot (Southwest Zone).[1916] There were no machines to build dams, so manual labour was used.[1917] In particular, workers numbering in the thousands[1918] were gathered from Kampong Cham and Kampong Thom (Central (old North) Zone) to work on the 1st January Dam, located in Baray District, Kampong Thom, over the course of its construction which began in December 1976.[1919] Mobile units walked between dam work-sites regardless of the distance and were not provided with food,

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[1914] SOK Moeun Civil Party Application, E3/4918, 6 January 2008, pp. 4, ERN (En) 00893391 (In 1977, the Khmer Rouge evacuated SOK Moeun and others to Tuol Ta Aek Factory, Battambang); LONG Sorn Civil Party Application, E3/4872, 9 January 2008, p. 3, ERN (En) 00842162 (In February 1977, the Khmer Rouge sent LONG Sorn from Bak Chien, Battambang Province to Phnum Thma Baing, Pursat Province).

[1915] LAY Bony Interview Record, E3/3958, 26 August 2009, p. 8, ERN (En) 00379161.

[1916] T. 25 January 2012 (PRAK Yut), pp. 92, 94-96 (While PRAK Yut was district secretary of Kampong Siem, Kampong Cham Province, she sent people out of Kampong Siem to build dams, including in Prey Chhor District, Kampong Cham Province. The Sector would request these people from the various districts. Around 50 people from each district were also recruited to build the dam at Kaoh Sla, the biggest dam in Kampot); T. 26 January 2012 (PRAK Yut), pp. 43-44 (PRAK Yut was district secretary in Kampong Siem for two months beginning in February or April 1977); SNGUON Tai Ren Interview Record, E3/5564, 24 November 2009, pp. 4-5, ERN (En) 00414576-7; AU Hau Interview Record, E3/5255, 18 November 2008, pp. 2-4, ERN (En) 00250043-5 (AU Hau was chief of Prey Srange Village, Ballang Sub-district, Baray District, Kampong Thom from 17 April 1975 until July 1977. Beginning in late 1976, new people were evacuated from the Southwest to his village); *See also*, Article by F. PONCHAUD: Kampuchea: *A Revolutionary Economy*, E3/2412, 25 January 1979, pp. 3-4, ERN (En) 00598521-2 (The 17 January Dam was built by 20,000 peasants and youths in mobile units beginning in May 1977. More than 23,000 youths constructed the 6 January Dam reservoir).

[1917] T. 25 January 2012 (PRAK Yut), p. 95.

[1918] VANN Theng Interview Record, E3/5249, 8 October 2008, p. 2, ERN (En) 00231858 (An estimated 8,000 people were gathered from Kampong Cham and Kampong Thom Provinces to work at the 1 January Dam work-site which commenced construction on 1 January 1977 and was finished that same year); AU Hau Interview Record, E3/5255, 18 November 2008, pp. 3-4, ERN (En) 00250044-5 (Approximately 20,000 people from Sectors 41, 42 and 43 worked at the 1st January Dam work-site in Kampong Thom Province); *See also*, Book by E. BECKER: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 240, ERN (En) 00237945 (Cooperatives in the general vicinity of the dam sent labour teams of thousands of people).

[1919] T. 17 December 2012 (SUON Kanil), pp. 26-29; VANN Theng Interview Record, E3/5249, 8 October 2008, p. 2, ERN (En) 00231858; AU Hau Interview Record, E3/5255, 18 November 2008, pp. 3-4, ERN (En) 00250044-5 (Beginning in December 1976 (although the 1st January dam construction was inaugurated by POL Pot in January 1977)); POUK Pon Interview Record, E3/5247, 7 October 2008, p. 2, ERN (En) 00232820 (In 1976, POUK Pon were transferred from Lbeauk, Kokir Thum Commune, Baray District, Kampong Thom to work at the 1 January Dam Work-site, Boeng Commune, Santuk District, Kampong Thom. There were about ten thousand people working at the 1 January Dam Work-site. They came from three provinces: Kampong Cham, Kampong Thom and Kratie).

water or mosquito nets.[1920] Sometimes, they were not escorted.[1921] However, nobody refused transfer unless they were sick or unable to walk.[1922]

11.4. Class Struggle against the 'New People': Transfers within the Northern, Southern and Central Regions

613. Besides seasonal re-location to advance agricultural production, people were also moved within the northern, central and southern regions to further the class struggle. "Class struggle" referred to the Party's opposition to the 'New People'.[1923] 'New People' included officials of the Khmer Republic, intellectuals, landowners, capitalists, feudalists and the petty bourgeoisie.[1924] The Party leadership considered that although they had been defeated and their class overthrown, the outlook and desires of this class remained the same.[1925] In particular, former officials of the Khmer Republic were targeted as the main enemies.[1926] The most dangerous enemies were to

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[1920] SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; SNGUON Tai Ren Interview Record, E3/5564, 24 November 2009, p. 5, ERN (En) 00414577.

[1921] SNGUON Tai Ren Interview Record, E3/5564, 24 November 2009, p. 5, ERN (En) 00414577.

[1922] SNGUON Tai Ren Interview Record, E3/5564, 24 November 2009, p. 5, ERN (En) 00414577 (If the Khmer Rouge soldiers confirmed that the illness was genuine, the sick could remain behind); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 11, ERN (En) 00443073 (The young, sick and elderly worked around the village).

[1923] *Revolutionary Youth*, E3/729, October 1975, p. 11, ERN (En) 00357910 (This was all part of the tough and tenacious class combat in the new current phase of the revolution; the class struggle is a life and death matter); Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 21, ERN (En) 00636028 (Private ownership existed as a result of society divided between an oppressive and an oppressed class. Private ownership strengthened, preserved and expanded the oppressive class, including feudalists, landowners, capitalists and other oppressive classes); *Revolutionary Flag*, E3/4, July 1976, p. 3, ERN (En) 00268915 (A Party slogan for 1976 declared: "Continue storming attacks to conduct class struggle inside the Party, inside the Army, inside all revolutionary ranks, inside the people, and inside the entire national society! Absolutely!"); *Revolutionary Flag*, E3/10, September-October 1976, p. 37, ERN (En) 00450537 (As for the private ownership of the capitalist class, the landowners, the wealthy peasants, it was thick and demanded mighty, absolute struggle; it demanded class dictatorship); T. 26 March 2012 (KAING Guek Eav), p. 31.

[1924] *See* Section 4: General Overview: 17 April 1975-6 January 1979, para. 169; *Revolutionary Flag*, E3/5, August 1975, pp. 11-12, ERN (En) 00401486-7; *Revolutionary Flag*, E3/748, October-November 1975, p. 19, ERN (En) 00495820; *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529 (Among the new peasants were the petty bourgeoisie, the capitalists, the feudalists and other workers and labourers. Therefore, there were life and death contradictions); *Revolutionary Flag*, E3/743, July 1977, p. 8, ERN (En) 00476163 ("Enemies" included the imperial aggressor and their servants of every type, the feudalist landowner-capitalist classes, and the various oppressor classes).

[1925] *Revolutionary Flag*, E3/5, August 1975, pp. 11-12, 26-27, ERN (En) 00401486-7, 00401501-2; *Revolutionary Flag*, E3/748, October-November 1975, p. 19, ERN (En) 00495820.

[1926] *See* Section 3: Historical Background, paras 120-127; Section 14: Joint Criminal Enterprise, paras 835-836; T. 6 August 2012 (SUONG Sikoeun), pp. 43-49 (The remnants of the former regime were considered the main enemies of the Party); T. 21 March 2012 (KAING Guek Eav), p. 26 (The remnants of the former LON Nol regime were targeted as the "main enemy").

be purged.[1927] Other 'New People' were moved from their home areas and thereby separated from their property and their former capitalist and feudalist lives. While they were moved and once at their destination, the 'New People' could be re-fashioned into peasants.[1928] By moving and purging the capitalist classes and eliminating private ownership, these "enemies" would have no power to oppose the Party.[1929]

614. After being moved, many 'New People' disappeared.[1930] Other 'New People', after being re-fashioned in the cooperatives, were to be integrated into the Party

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[1927] Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976, p. 12, ERN (En) 00183993 (There were three categories of enemies: the dangerous category had to be absolutely purged, the ordinary liberal category had to be educated again, and those incited by enemies should undergo re-fashioning).

[1928] *Revolutionary Flag*, E3/5, August 1975, pp. 11-12, 29-31, ERN (En) 00401486-7, 00401504-6; *Revolutionary Flag*, E3/748, October-November 1975, p. 19, ERN (En) 00495820; *Revolutionary Flag*, E3/10, September-October 1976, pp. 8-14, ERN (En) 00450508-14 (Remnants of the feudalist and capitalist regime remained and had to be eradicated by successive education, re-fashioning, and criticism and self-criticism); Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/797, 18 August 1976, p. 2, ERN (En) 00183965 (On 18 August 1976, the Party instructed Secretaries and Deputy-Secretaries to pay attention to Party building and in particular to fashioning an understanding of duties in terms of educating and re-fashioning the masses to ensure firmness of initiative); *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903 (In dealing with the new people, cooperativeshad to become adept at managing labour forces and ideologically mentoring and re-fashioning urban evacuees in the cooperatives); Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 30, ERN (En) 00636037 (A person may be re-fashioned by labour in the cooperatives, by building dikes, and digging canals); DK Document: *Follow-Up of Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party*, E3/99, 22 September 1975, p. 2, ERN (En) 00244275 (The former civil servants, petty bourgeoisie, traders, domestic compradors, aristocrats were categorized as new peasants. These new peasants did not enjoy the political and economic status as they used to particularly after their settlement in the rural areas. The political, economic, cultural bases of the old regime were dug up and destroyed).

[1929] *Revolutionary Flag*, E3/5, August 1975, pp. 11-12, 26-27, 29-31, ERN (En) 00401486-7, 00401501-2, 00401504-6; *Revolutionary Flag*, E3/748, October-November 1975, p. 19, ERN (En) 00495820; *Revolutionary Flag*, E3/4, July 1976, p. 5, ERN (En) 00268917 (Further into the future, it is imperative to continue class struggle to attack and bring down and totally eliminate the feudalist-bourgeoisie class and the other reactionary classes so that the enemy cannot infiltrate), p. 5, ERN (En) 00268917 (The Party had to smash and scatter all opposing forces, so that the country could be defended), p. 6, ERN (En) 00268918 (Only when the feudalist and bourgeoisie class were gone, only when their opposing forces were weakened, could the Party progress quickly. The Party could not be frivolous about this matter, nor could it be loose and relaxed about this matter); *Revolutionary Flag*, E3/10, September-October 1976, p. 24, ERN (En) 00450524 (Only after eradicating everything that was capitalist class, everything that was oppressor class, everything that was private, could the Party whip up the movement to build socialism); *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 31, 32-3, ERN (En) 00491424, 00491425-6 (The Party instructed that members should not hope to plead with the enemy soldiers, to do ordinary political work with them: they had to be attacked and mobilised to have them come out in order to save themselves and come back to live with the people again).

[1930] T. 19 June 2013 (NOU Mao), pp. 44, 52-53.

system.[1931] Until that time, the Party leadership instructed that "no-good elements" had to be administered separately.[1932]

11.4.1. *Re-fashioning in the Cooperatives (September 1975 to December 1976)*

615. In August 1975, the Standing Committee considered that, in the cooperatives, the 'Old People' were the core, while the 'New People' were to be on the outskirts of society, learning from the 'Old People' and being re-fashioned into peasants through hard labour.[1933] The Party leadership warned in October 1975 that "enemy agents and

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[1931] T. 29 March 2012 (KAING Guek Eav), pp. 7-8 (In 1978, during a study session at which POL Pot and NUON Chea were present, POL Pot stated that the people of Phnom Penh had been "tempered" in the cooperatives and two or three years later, they could blend into the cooperatives); Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976, p. 12, ERN (En) 00183993 (Those incited by enemies should undergo re-fashioning); DK Document: *Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a West Zone Assembly*, June 1976, in *Pol Pot Plans the Future*, E3/213, p. 30, ERN (En) 00104013 (Rice production was a very great lesson. The city people did not know what a rice field was, what a cow was, what harvesting was. After being re-located, they knew and understood: they were no longer scared of cows and buffaloes. The subject of study was real work. Real work provided experience); T. 17 December 2012 (SUON Kanil), p. 6 (Before new people could be used, they first had to be carefully selected and purified); *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529 (When new people reformed, there were not life and death contradictions, but they did not easily reform); *Revolutionary Flag*, E3/10, September-October 1976, p. 33, ERN (En) 00450533 (These new peasants must be educated and built into worker-peasants. The Party had the potential to reform a number of them. Some of them would not reform; they looked for successive opportunities to oppose the revolution); *Revolutionary Flag*, E3/11, September 1977, p. 47, ERN (En) 00486258 (The dictatorship of the proletariat is applied to those who opposed the Party); *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903 (In dealing with the new people, veteran Party members and base people must become more adept at managing labour forces and ideologically mentoring and re-fashioning urban evacuees in the cooperatives); *Revolutionary Youth*, E3/729, October 1975, pp. 4-5, ERN (En) 00357903-4 (Through constant education and rectification, the cooperatives become the greatest of universities for the study of revolutionary knowledge); Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 5-6, ERN (En) 00636012-3 (In cooperatives, upper class forces had no choice but to follow poor and lower middle-class peasants. The Party ordered that cooperatives be strengthened and expanded, integrating 1,000 families), p. 8, ERN (En) 00636015 (Cooperatives were a means to attack, abolish and eliminate the feudalists, capitalists, middlemen and rich peasants), p. 30, ERN (En) 00636037 (A person may be re-fashioned by labour in the cooperatives, by building dikes, and digging canals).

[1932] Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/798, 30 August 1976, pp. 1, 3, ERN (En) 00183966, 00183968 ("No-good elements" included, among others, the families of those already swept out, those removed from their positions, and the new people who didn't yet understand things).

[1933] Standing Committee Report, E3/216, 20-24 August 1975, pp. 3-4, 6, ERN (En) 00850975-6, 00850978; *See also, Revolutionary Flag*, E3/10, September-October 1976, p. 14, ERN (En) 00450514 (The Party must continue to strengthen and expand the collective position); *Revolutionary Flag*, E3/139, November 1976, p. 11, ERN (En) 00455288 (It remained imperative to gather up people and send them to cooperatives); *Revolutionary Flag*, E3/11, September 1977, p. 45, ERN (En) 00486256 (It was necessary that cooperatives should expand in size); Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 5-6, ERN (En) 00636012-3,(In

a variety of other bad elements" were still mixed among the more than two million 'New People' that had just gone to the countryside.[1934] Thus in late 1975 and into 1976, the Party waged a "systematic attack on every field to dig [the bad elements among the 'New People'] out by the large roots and the small roots".[1935]

616. In mid-1976, the Party declared that it had organized, built, strengthened and expanded the cooperatives, attacked the capitalist regime and ended the feudalist-landowner regime.[1936] Thus in mid-1976, the primary focus began to shift to enemies within the Party.[1937] Nevertheless, it was still considered essential to attack the 'New

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cooperatives, upper class forces had no choice but to follow poor and lower middle-class peasants. The Party ordered that cooperatives be strengthened and expanded, integrating 1,000 families); DK Document: *Follow-Up of Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party*, E3/99, 22 September 1975, p. 3, ERN (En) 00244276 (The new peasants have expanded the cooperatives and the forces for agriculture in the bases. New people had to be trained and mobilized to defend and rebuild the country); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 6, ERN (En) 00443068(A common practice of the Khmer Rouge to control a newly liberated population, especially those people turned out of the cities, was to integrate them into villages long under their authority).

[1934] *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903.

[1935] *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 3, ERN (En) 00491396 (In 1976, the feudalist landowners and capitalists, like the various other classes that were non-proletarian and the petty bourgeoisie of the private farmers, private workers, and the private labourers, were also dug out by the roots); *Revolutionary Flag*, E3/170, October-November 1977, p. 12, ERN (En) 00182559 (Between 1975 and 1976, the Party cleanly swept the enemy and began focusing on the cadres in the cooperatives); *Revolutionary Flag*, E3/748, October-November 1975, p. 15, ERN (En) 00495814 (In order to achieve three tonnes per hectare, it was necessary to strengthen the Party's power and the proletariat dictatorship. In practical and concrete terms this meant, *inter alia*, continuing a more active class struggle by the relentless, complete and conclusive elimination of class and regime of feudalists, landlord and capitalists so that they had no opportunity to raise their heads and act as sympathizers for the imperialists).

[1936] *Revolutionary Flag*, E3/759, April 1976, pp. 10-12, 16, ERN (En) 00517858-60, 00517864 (On 15 April 1976, celebrating the anniversary of the liberation of Phnom Penh, a Party representative declared that the feudalist-landowner regime had been totally and permanently ended. The Party had also attacked and toppled and uprooted the capitalist regime. Finally, the Party had organized, built, strengthened and expanded the collective regime); *Revolutionary Flag*, E3/762, August 1976, p. 12, ERN (En) 00486753 (The struggle against the old regime and remnants of the various feudalists, landowners, imperialists and colonists was much more advanced in August 1976 than it had been previously); *Revolutionary Youth*, E3/734, July 1976, pp. 10, 13, ERN (En) 00360785, 00360788 (By 1976, the main threats were the newly generated bourgeois elements in the Party. The feudal class and bourgeoisie had basically disintegrated completely (their economic foundations and political regime had been overthrown and dissolved), members of this class existed only as individuals. Moreover, these individuals were dispersed and scattered and went down to increase production in the countryside, where they were totally subordinated to peasants in the cooperatives).

[1937] *Revolutionary Flag*, E3/4, July 1976, pp. 9, 11, 15, 18-23, ERN (En) 00268921, 00268923, 00268927, 00268930-5; *Revolutionary Flag*, E3/762, August 1976, pp. 7, 10-11, 20, 26, ERN (En) 00486748, 00486751-2, 00486761, 00486767; T. 21 March 2012 (KAING Guek Eav), p. 26; T. 27 August 2012 (EM Oeum), pp. 32-33 (Enemies included those who obstructed the party's affairs or did not perform well even if they were direct relatives); T. 22 April 2013 (CHHOUK Rin), pp. 57-59 (Many senior leaders of the Khmer Rouge army were arrested. They accused one another of being the enemy even though he could not comprehend them being CIA or KGB agents).

People', the remnants of the feudalists and capitalists.[1938] Throughout 1976, the cooperatives continued to expand, on average to between 100 and 300 families, with some reaching as many as 500 families and some commune cooperatives reaching as many as 1,000 families.[1939]

617. By mid-1976, Khmer Rouge soldiers had gathered hundreds of former soldiers of the Khmer Republic and their families, and transported them by cart and on foot to various locations including Thkaol in Pursat Province (Northwest Zone);[1940] Boeung Kantout,[1941] Chock[1942] and Au Pongmoan[1943] in Battambang Province (Northwest Zone); and Thmei Commune, Kratie Province (Sector 505).[1944] They were not provided food along the way, were threatened with loaded weapons and questioned about their history.[1945] Civil Party MEAS Chanthan's grand-uncle could not walk and

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[1938] *Revolutionary Youth*, E3/733, May 1976, p. 10, ERN (En) 00357877; *Revolutionary Youth*, E3/734, July 1976, p. 10, ERN (En) 00360785 (The future was to continue to smash the remnant debris of the bourgeois system).

[1939] *Revolutionary Flag*, E3/762, August 1976, p. 15, ERN (En) 00486756; Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, pp. 5-6, 11-12, ERN (En) 00636012-3, 00636018-9 (In cooperatives, upper class forces had no choice but to follow poor and lower middle-class peasants. The Party ordered that cooperatives be strengthened and expanded, integrating 1,000 families).

[1940] T. 24 October 2012 (LAY Bony), pp. 15-16; LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 8-10, ERN (En) 00379161-163 (LAY Bony's husband was a former Lon Nol soldier and when the Khmer Rouge discovered his identity, LAY Bony and her husband were arrested and taken to Thkaol security centre).

[1941] T. 29 May 2013 (THOUCH Phandarasar), p. 9; THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179.

[1942] MEAS Chanthan Civil Party Application, E3/4730, 10 July 2009, pp. 6-10, ERN (En) 00427028-32 (In early December 1975, the Khmer Rouge gathered more than 200 families into the centre including LON Nol officials, soldiers and police. The next morning, 30 carriages moved them to Chom Nom union centre, Chom Nom Commune. The next day they were moved on foot to Rohart Tek village, 15 kilometres away. They were then taken to Chock Village).

[1943] PRUM Sarun Interview Record, E3/5187, 18 June 2008, p. 4, ERN (En) 00274179 (In mid-1976, former LON Nol soldiers and their families were evacuated from and within Battambang Province, some were taken to Au Pongmoan base).

[1944] HENG Lai Heang Interview Record, E3/436, 23 November 2009, p. 9, ERN (En) 00414569 (The Khmer Rouge gathered former Khmer Republic policemen and soldiers and sent them to a work-site in Thmei Commune, Kratie Province where they did manual labour and farming); *See also*, Article by B. KIERNAN: *Khmer Bodies with Vietnamese Minds: Kampuchea's Eastern Zone, 1975-1978*, E3/2310, p. 11, ERN (En) S 00048078 (In June 1975, in the portion of Kratie Province which was part of the East Zone, over 100 former Khmer Republic soldiers and a number of teachers were taken away for re-education and disappeared).

[1945] T. 29 May 2013 (THOUCH Phandarasar), p. 8; THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179 (THOUCH Phandarasar, her family and at least six other families were threatened with loaded weapons and questioned about their history at Boeung Kantuot, near Battambang); MEAS Chanthan Civil Party Application, E3/4730, 10 July 2009, pp. 6-10, ERN (En) 00427028-32.

the family had to carry him.[1946] After being released, the people were then transferred to new locations and some were separated from their families.[1947]

618. At Thkaol in Pursat, between 1975 and 1977, many people were released after questioning and sent to zones which allegedly had plentiful food.[1948] These people disappeared, including Civil Party LAY Bony's husband.[1949] LAY Bony also said that the clothes of some of those who disappeared were returned to Thkaol for others to use.[1950] She was told later that some were executed, but no one ever saw their bodies.[1951] In late 1976, the Khmer Rouge discovered that Civil Party SUONG Sim's grandmother was a grocer before 17 April 1975 and that his uncles were educated. They were transferred from Samraong Village, Bakan District to Robang Romeas, Pursat Province and never returned.[1952]

619. In southern Cambodia, the Khmer Rouge sent 'New People' and former soldiers of the Khmer Republic for re-fashioning at locations such as Ta Ney Prison, Kampot Province[1953] and Sgnok Mountain, Kampong Speu (Southwest and West Zones).[1954] Approximately 50 people sent for re-fashioning on Sgnok Mountain were

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[1946] MEAS Chanthan Civil Party Application, E3/4730, 10 July 2009, pp. 6-10, ERN (En) 00427028-32.

[1947] T. 29 May 2013 (THOUCH Phandarasar), p. 10; THOUCH Phandarasar Supplementary Information, E3/5732, 10 January 2008, p. 1, ERN (En) 00852179 (They were released and separated between villages about 3 or 4 kilometres apart. THOUCH Phandarasar, her husband and children were sent to Phnom Thmei Village, while her parents and brother's children were taken to Boeung Kantout); MEAS Chanthan Civil Party Application, E3/4730, 10 July 2009, pp. 6-10, ERN (En) 00427028-32.

[1948] T. 24 October 2012 (LAY Bony), pp. 17, 42 (Estimating that as many as 100,000 people were released); LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 8-10, ERN (En) 00379161-3.

[1949] T. 24 October 2012 (LAY Bony), pp. 16-17, 42; LAY Bony Interview Record, E3/3958, 26 August 2009, pp. 8-10, ERN (En) 00379161-3.

[1950] T. 24 October 2012 (LAY Bony), p. 17; LAY Bony Interview Record, E3/3958, 26 August 2009, p. 10, ERN (En) 00379163.

[1951] T. 24 October 2012 (LAY Bony), p. 42; LAY Bony Interview Record, E3/3958, 26 August 2009, p. 10, ERN (En) 00379163.

[1952] SUONG Sim Interview Record, E3/4657, 9 July 2009, pp. 7-8, ERN (En) 00353705-5.

[1953] LOEUNG Bunny Interview Record, E3/5543, 11 September 2009, pp. 3-7, ERN (En) 00384778-82 (After 17 April 1975, LOEUNG Bunny (whose father managed a warehouse for the government before 1975) and his family were transferred from Sihanoukville to various locations in Prey Nob District, Kampot Province and then to Kasang Cooperative, Kampot Province and then in late 1975 to Ta Ney Prison. The Khmer Rouge accused his father of being a LON Nol soldier in 1976. He was arrested and transferred to Ta Ney Prison, Prey Nob District, Kampot Province. LOEUNG Bunny and his family were also arrested five days later and taken to Ta Ney Prison. The family was later transferred to Kampong Seila Prison, Bak Ramos Village, Champa Commune, Kampong Seila District, Koh Kong Province where they remained until 1979).

[1954] T. 5 December 2012 (PECH Srey Phal), pp. 34 (She fled to Kong Russei, Kampong Speu where she stayed five days before surrendering to Khmer Rouge soldiers and being sent to Sgnok Mountain),

transferred under guard and were not provided food or water.[1955] Upon arrival, they had no shelter, food, water or medicine.[1956] Thereafter, many died from wild boar attacks, starvation, dehydration and disease.[1957] After about two months, Angkar announced that the twenty survivors had been re-fashioned and they were permitted to leave the mountain.[1958] At the base of the mountain, Angkar put them onto trucks which took them to a train station in Phnom Penh where they were boarded onto a train to Kampong Chhnang (West Zone).[1959]

620. In 1976, approximately 600 families were evacuated from Prey Veng and Kampong Cham Provinces (East Zone) to Mondulkiri Province (Northeast Zone).[1960] Most were taken to Sre Sangkum, Koh Nek District, but the "bad people" were taken to Raya Work-site.[1961]

11.4.2. *"Clearly distinguish the elements" (1977)*

621. The Party leadership believed it was necessary to have "good people" (according to the Party's class line, meaning those considered as such based on their social class) to farm the most fertile land, in order to increase production and solve the water problem.[1962] Middle peasants and the petty bourgeoisie, who were deemed less reliable, were to be assigned, under the leadership of the proletariat or party members originating from the base class, to tasks secondary to farming the most fertile land.[1963]

41-43, 56, 63 (PECH Srey Phal, her husband and about 50 other new people were sent by Khmer Rouge soldiers to Sgnok Mountain, Kampong Speu to be re-fashioned).

[1955] T. 5 December 2012 (PECH Srey Phal), p. 41; PECH Srey Phal Interview Record, E3/3970, 29 December 2009, p. 5, ERN (En) 00434932 (They were given no food or water).

[1956] T. 5 December 2012 (PECH Srey Phal), pp. 41-42.

[1957] T. 5 December 2012 (PECH Srey Phal), pp. 42-43; PECH Srey Phal Interview Record, E3/3970, 29 December 2009, p. 5, ERN (En) 00434932.

[1958] T. 5 December 2012 (PECH Srey Phal), pp. 42-43; PECH Srey Phal Interview Record, E3/3970, 29 December 2009, p. 5, ERN (En) 00434932 (50 people were initially taken to the mountain. They remained for two to three months and were then permitted to leave the mountain: the Khmer Rouge told them they had been re-fashioned).

[1959] T. 5 December 2012 (PECH Srey Phal), pp. 44, 56-57, 64; PECH Srey Phal Interview Record, E3/3970, 29 December 2009, p. 5, ERN (En) 00434932.

[1960] BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 11, ERN (En) 00274104.

[1961] BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 11, ERN (En) 00274104.

[1962] *Revolutionary Flag*, E3/193, August 1977, p. 21, ERN (En) 00399241.

[1963] *Revolutionary Flag*, E3/170, October-November 1977, pp. 15, 36-37, ERN (En) 00182562, 00182583-4; Sector 5 Committee Report, E3/178, 21 May 1977, pp. 1-2, 4-5, 9, 13-14 ERN (En) 00342708-9, 00342711-2, 00342716, 00342720-1 (Sector 5 was overpopulated with 17 April elements and therefore, cooperatives and forces were being prepared based on the poor peasants and lower middle class peasants. 17 April elements were being sent to the cooperatives and being strategically

Thus, in 1977, in the cooperatives, it was necessary to clearly distinguish people as "full rights members" (base people in the cooperatives), "candidate members" (those base people who were financially well-off before April 1975) and "depositee members" (the "17 April" people) to prevent any confusion in managing and gathering forces.[1964]

622. In 1977, the Sambour District chief, Phan, ordered Witness YUN Kim, chief of Sambour Commune, Kratie Province, to classify people according to these categories.[1965] That same year, CHUON Sam At who had already been evacuated from Phnom Penh and moved several times thereafter, was accused by the Khmer Rouge of being a teacher, arrested with his family and transported by ox cart from Bos Meas to Brasra, Sambo District, Kratie Province (Sector 505).[1966]

623. In Kampong Thom Province (Central (old North) Zone), the "upper level" selected 'New People' to be moved to new villages.[1967] Local officials were provided with lists and instructed to prepare those people to board trucks sent by the Sector.[1968] People accused of being educated or officials of the Khmer Republic were taken to new locations in Kampong Thom and Kampong Cham Provinces (Central (old North) Zone) and Takeo and Kampot Provinces (Southwest Zone), and some people then disappeared.[1969] In Rumchak Village, Takeo Province (Southwest Zone), all the 'New

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gathered and assigned, under a dictatorship of the proletariat. The 17 April elements were also blamed for emaciated cows); *Revolutionary Flag*, E3/193, August 1977, p. 14, ERN (En) 00399234 (A number of post-liberation elements throughout the country did not consider the cattle to be their comrades in arms); *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 17, ERN (En) 00491410 (In 1977, remnants of the various exploiting classes still remained a threat), pp. 31-32, ERN (En) 00491424-5 (In 1977, the cooperatives had to be further strengthened and expanded); *Revolutionary Flag*, E3/135, June 1977, p. 24, ERN (En) 00446869 (The middle and upper classes were less reliable than the fundamental class).

[1964] *Revolutionary Flag*, E3/742, April 1977, pp. 14-15, ERN (En) 00478505-6; T. 19 June 2012 (YUN Kim), pp. 64-65; T. 20 June 2012 (YUN Kim), pp. 29-30.

[1965] T. 19 June 2012 (YUN Kim), pp. 62-66; T. 20 June 2012 (YUN Kim), pp. 29-30.

[1966] CHUON Sam At Civil Party Application, E3/4707, 23 December 2008, p. 4, ERN (En) 00417897 (CHUON Sam At was moved from Kampong Cham to Bos Meas, Sambo District, Kratie Province in 1976).

[1967] AU Hau Interview Record, E3/5255, 18 November 2008, pp. 2-4, ERN (En) 00250043-5.

[1968] AU Hau Interview Record, E3/5255, 18 November 2008, pp. 2-4, ERN (En) 00250043-5.

[1969] SAY Kanal Civil Party Application, E3/4699, 7 July 2008, pp. 7-8, ERN (En) 00414895-6 (In early 1977, the Khmer Rouge began arresting new people and assigning them to new villages. SAY Kanal's sister and brother-in-law were taken away in late 1977. His brother-in-law had told the Khmer Rouge that he was a professor before 17 April 1975 thinking that they were only taking soldiers away); HON Sikem Victim Complaint, E3/5390, 21 November 2008, pp. 7-10, ERN (En) 00877810-3 (In the dry season of 1977, HON Sat, who was four months pregnant, her husband (a former LON Nol soldier), their children and ten other families were arrested and taken eastwards towards Punhea Krek

People', including those previously evacuated from Phnom Penh, had been displaced.[1970]

11.5. Transfers away from the Vietnamese Border

624. Along the border with Vietnam, incursions were on-going from the end of 1976 and into 1977.[1971] People were withdrawn from various locations in the East Zone along the border with Vietnam including Kampong Cham Province (Spea Rongand Memot)[1972] and Svay Rieng Province (Samraong, Sa Thnank, Prasat , Svay Thom and Bavet).[1973]

625. The Khmer Rouge told the people they were being evacuated for their protection.[1974] "Bad elements" were instead evacuated to the rear for re-education,

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District. She only found out that they were killed after 1979); YUOS Phal Interview Record, E3/4611, 12 December 2009, p. 5, ERN (En) 00455378 (In 1977, after it was reported to the Khmer Rouge that he was a second lieutenant in the LON Nol police, he was re-located to Cheung Chab Security Centre, Kampot Province. All prisoners there were former police or military and were interrogated two to three times); NHEM Yang Victim Complaint, E3/5361, 14 August 2008, p. 6, ERN (En) 00874120 (In 1977, new people in Takeo Province were taken to plant coconuts, which meant execution, in southern Takeo Province).

[1970] NHEM Yang Victim Complaint, E3/5361, 14 August 2008, p. 6, ERN (En) 00874120.

[1971] Southwest Zone Report, E3/853, 3 June 1977, p. 1, ERN (En) 00185243 (In June 1977, the Southwest Zone reported to Angkar that the Vietnamese were shelling the border and had sent forces 3 kilometres from the Kampot-Vietnam border); IENG Thirith Interview by Elizabeth Becker, E3/659, October-November 1980, pp. 29-30, ERN (En) 00182326-7 (IENG Thirith explained that after the Vietnamese invaded in December 1976/January 1977, the government took measures to protect civilians and evacuated them from east to west); BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 4, ERN (En) 00274097 (People in Keo Sima District, Sector 5, Mondulkiri Province, Northeast Zone were not evacuated until 1977 because they had rice paddies, dams and irrigation canals. In 1977, the Khmer Rouge attacked the Vietnamese and the people of Keo Sima were evacuated).

[1972] DK Telegram, E3/908, 24 December 1977, pp. 1-2, ERN (En) 00183638-9 (PHUONG reported to M-870, copying NUON Chea, that following Vietnamese incursion, all workers in Spean Rong and the Memot factory were withdrawn); DK Telegram, E3/912, 27 December 1977, p. 1, ERN (En) 00183640.

[1973] DK Telegram, E3/889, 27 October 1977, p. 1, ERN (En) 00183616 ERN(Fr)00386232 (Addressing "M 870" and copying NUON Chea, Chhon reported that they had evacuated local villagers and mobile brigades from Samraong, Sa Thnank, Prasat and Bavet, Svay Rieng Province. More evacuations continued); KHEM Leng Interview Record, E3/5539, 28 August 2009, p. 7, ERN (En) 00380127 (In early 1977, the Vietnamese Army entered Svay Rieng Province and KHEM Leng, his family and others were evacuated from Svay Thom to the area of Svay Rieng Town in Svay Rieng Province); IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229 (In the middle of 1977, IN Vuthy, along with all the people in Prasat Commune, Chantrea District, Svay Rieng Province, were transferred west to Prey Korkir Commune, onto Daun Sa Village, North Svay Rieng Town and then at the end of 1977, to Chhrey Village, Chvang Commune, Kompong Traback District, Prey Veng Province).

[1974] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229.

grouping and screening.[1975] Later, some people evacuated to the rear were called to work other places.[1976] They followed the Khmer Rouge soldiers and then disappeared.[1977] After the Khmer Rouge re-distributed their clothing, their relatives assumed that they had been killed.[1978] Meanwhile, mobile units were sent back to the front lines to harvest rice,[1979] carry ammunition,[1980] and carry wounded Khmer Rouge soldiers from the battlefield.[1981]

626. During these movements from the Vietnamese border, the people travelled on foot.[1982] Food was transported with them and the Khmer Rouge controlled its distribution.[1983] The elderly and sick were carried on hammocks.[1984]

11.6. Legal Findings

627. In connection with movement of the population (phase two), the Closing Order charges the Accused with the crimes against humanity of extermination,[1985] political

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[1975] DK Telegram, E3/243, 19 January 1978, p. 2, ERN (En) 00532796; SENG Mardi Interview Record, E3/5613, 26 March 2010, pp. 3-5, 10, ERN (En) 00494399-401, 406 (The only reason SENG Mardi could think of for his arrest was the fact that his father was a LON Nol officer or because they were new people. People in other locations along the Vietnamese border were similarly re-located due to Khmer Rouge distrust and fear that these people would collude with the Vietnamese invaders). "Bad elements" were likewise being withdrawn from other borders, such as those Sector 103 and the Northeast Zone (*see e.g.* T. 5 June 2012 (SAO Sarun), pp. 91-92 (The population of Kaev Seima, Mondulkiri was removed in 1978 as the Khmer Rouge feared they would collude with the Vietnamese. They were re-located to Kaoh Nheaek District); DK Telegram, E3/918, 12 January 1978, p. 1, ERN (En) 00182757 (Copying POL Pot and NUON Chea, amongst others of the Standing Committee)).

[1976] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 6, ERN (En) 00373230.

[1977] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 6, ERN (En) 00373230.

[1978] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 6, ERN (En) 00373230.

[1979] DK Telegram, E3/243, 19 January 1978, p. 2, ERN (En) 00532796 (Copying NUON Chea, Chhon reported that mobile units were organized to harvest at the front); KHEM Leng Interview Record, E3/5539, 28 August 2009, p. 8, ERN (En) 00380128; *See also,* DK Telegram, E3/906, 23 December 1977, p. 1, ERN (En) 00183637 (Vietnamese troops caught 100 members of a mobile group harvesting rice); DK Telegram, E3/978, 5 November 1977, p. 1, ERN (En) 00324808 (After reporting to "M-870", copying NUON Chea and others of the Standing Committee, that there were Vietnamese incursions, Khuon emphasised the need to mobilise all masses to solve the water problems and prepare forces to farm rice on any land with water); DK Telegram, E3/984, 10 December 1977, p. 1, ERN (En) 00335210 (The Vietnamese reached Kampong Puoy, destroyed Trasek Dam and captured members of a mobile unit).

[1980] KHEM Leng Interview Record, E3/5539, 28 August 2009, p. 8, ERN (En) 00380128.

[1981] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229 .

[1982] KHEM Leng Interview Record, E3/5539, 28 August 2009, p. 8, ERN (En) 00380128; IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229 .

[1983] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229; *See also,* DK Telegram, E3/914, 31 December 1977, p. 1, ERN (En) 00183641 (Reporting to "M-870" that cooperative people and workers moved from Memot and Krek were moving towards the river and had food shortages. Assistance was requested).

[1984] IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 5, ERN (En) 00373229 .

persecution[1986] and other inhumane acts comprising enforced disappearances,[1987] forced transfer[1988] and attacks against human dignity.[1989] Movement of the Cham Muslim minority forms the basis of both forced transfer and religious persecution charges in connection with movement of the population (phase two).[1990] The latter charges of religious persecution do not fall within the scope of Case 002/01.[1991] As the factual basis for these two charges is the same and the charges are inextricably linked, the Chamber will not make findings in this judgement concerning allegations of the forced movement of the Cham that are also charged as religious persecution.

628. While the KHIEU Samphan Defence and NUON Chea Defence concede that people were moved during phase two, both challenge the forced and criminal nature of the movements, as well as the control exercised by the Party Centre.[1992] In closing submissions, the KHIEU Samphan Defence also submitted that the temporal and geographic particulars of movement of the population (phase two) are vague and that the allegations falling within the scope of Case 002/01 do not extend into 1977.[1993] The Chamber notes, first, that this challenge to the form of the Closing Order and sufficiency of notice was not raised before the Pre-Trial Chamber. Pursuant to Internal Rules 67(2) and 76(7), once appeals against the Closing Order are resolved,

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[1985] Closing Order, paras 1381-1390.
[1986] Closing Order, paras 1416-1418, 1424-1425.
[1987] Closing Order, paras 1470-1478.
[1988] Closing Order, paras 1448-1469.
[1989] Closing Order, paras 1434-1441.
[1990] Closing Order, paras 266, 268, 281, 901, 1420, 1468.
[1991] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3; *See also*, Co-Prosecutors' Request for Clarification of Findings Regarding the Joint Criminal Enterprise Alleged in Case 002/01, E284/5, 7 August 2013, para. 11 (noting that no witnesses were heard before the Chamber concerning the movement of the Cham and requesting that the Chamber "specifically exclude from consideration the allegations relating to the Cham that are included in some of the paragraphs discussing the 2nd Forced Movement").
[1992] NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013, paras 318-319 (decision made by the Zone leaders, not the centre), 321-333 (there is no evidence of death on a massive scale or specific intent to exterminate), 334-344 (no evidence of differential treatment or specific intent to persecute), 352-359 (no evidence of enforced disappearances), 360-364 (no evidence of attacks against human dignity), 365-368 (no evidence of forced transfer and arguing, *inter alia*, that the movements were voluntary); [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 61-64 (vagueness of contours of evidence concerning the second movement, as well as submitting that KHIEU Samphan was not involved), 65-69 (the transfer was justified as an economic movement), 70 (the involvement of the centre), 71 (the movement was an attempt to solve the economic and humanitarian situation).
[1993] [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 61-62.

no issues concerning its form can be raised before the Trial Chamber. Further, the KHIEU Samphan Defence did not raise this challenge before the Trial Chamber within the time-limit imposed by Internal Rule 89(1) for the filing of preliminary objections, or at any other time prior to the filing of Closing Briefs. The Chamber therefore finds that, insofar as the KHIEU Samphan Defence is challenging the form of the Closing Order, its belated submissions are inadmissible.

629. In any event, Defence arguments that movement of the population (phase two) is not alleged to extend into 1977 are without merit. According to the Closing Order, movement of the population (phase two) began around September 1975 and continued into 1977.[1994] In support of this temporal period, the Closing Order expressly cites Civil Party interview records referring to movements in early, mid and late 1977.[1995] Otherwise, the Defence appears to be challenging the sufficiency of the evidence,[1996] which the Chamber will address in its legal findings that follow.

11.6.1. *Forced Transfer*

630. The Chamber finds that between September 1975 and early 1977, at least 300,000 to 400,000 people were displaced from various locations in Kandal, Kampong Thom, Kampong Cham, Takeo, Kampong Speu, Kampong Chhnang, Prey Veng and Svay Rieng Provinces (Central, Southwest, West and East Zones) to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom Province (Central (old North) Zone) and Preah Vihear Province (Sector 103).[1997] The Chamber finds that, between September 1975 and December 1977, more than 30,000 people[1998] were also displaced to Kratie (Sector 505), from and within Prey Veng and Svay Rieng Provinces (East Zone), within Kampong Thom and Kampong Cham Provinces (Central (old North) Zone) and within Battambang Province (Northwest Zone).[1999] Although the Co-Investigating Judges alleged that people were also moved to Siem

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[1994] Closing Order, paras 163, 262; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.
[1995] Closing Order, fn. 1003.
[1996] [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 61-64.
[1997] *See* Section 11: Movement of the Population (Phase Two), paras 580, 584-601.
[1998] *See* Section 11: Movement of the Population (Phase Two), para. 581.
[1999] *See* Section 11: Movement of the Population (Phase Two), paras 602-626.

Reap Province (Sector 106) and to Kampong Cham Province (Central (old North) Zone), the Chamber has not identified sufficient evidence supporting these allegations in Case 002/01.

631. The evidence establishes that the overwhelming majority of persons displaced during phase two were Cambodians already re-located by the Khmer Rouge prior to September 1975.[2000] Obviously, the fact that persons are already displaced from their home territory does not mean that their presence is illegal at the destination of their displacement. In addition, some people displaced during phase two were Cambodians lawfully residing in their home territories.[2001]

632. The overwhelming majority of the evidence before the Chamber indicates that most people were ordered to leave and were transferred under armed guard.[2002] Those who refused transfer or attempted escape were arrested, detained or transferred in a further round of movements.[2003] Khmer Rouge guards provided no assistance and often no information as to their destination. People were frightened and lived in a state of terror, unwilling or unable to disobey or question orders.[2004]

633. There is evidence that some people displaced to Battambang and Pursat Provinces (Northwest Zone) from southern Cambodia went willingly due to the poor living conditions in the Southwest, West and East Zones.[2005] Prior to September 1975, the Khmer Rouge re-located many people from their homes in Phnom Penh and other locations to over-populated areas in the West, Southwest and East Zones which had infertile land and insufficient resources and food.[2006] Therefore, the Khmer Rouge created the humanitarian situation in which the people found themselves during displacements between September 1975 and 1977. Consequently, willingness to be re-located cannot be seen as the genuine exercise of choice. People were told and believed that better land and resources awaited them at their destination or that they

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[2000] *See* Section 11: Movement of the Population (Phase Two), paras 584, 588-589, 622-623.
[2001] *See* Section 11: Movement of the Population (Phase Two), para. 588.
[2002] *See* Section 11: Movement of the Population (Phase Two), paras 588, 594-598, 600-601, 608-609, 617-620, 622-623, 625-626.
[2003] *See* Section 11: Movement of the Population (Phase Two), paras 588, 598, 609
[2004] *See* Section 11: Movement of the Population (Phase Two), paras 582, 589, 591, 594-595, 597-599, 601, 609, 611-612, 617, 623, 625.
[2005] *See* Section 11: Movement of the Population (Phase Two), para. 589.
[2006] *See* Section 11: Movement of the Population (Phase Two), paras 584, 587; Section 10: Movement of the Population (Phase One), paras 485, 516-517.

were being transferred back to their homes.[2007] Many were not returned to their homes or were not transferred to the destination they were told they would be sent to.[2008] The Chamber therefore finds that people had no genuine choice concerning their transfer and that Khmer Rouge soldiers and officials forcibly transferred people by various methods including force, coercion and deception.

634. The Party justified its mass relocations of people in large part on the pretext of caring for the population, allegedly moving them to zones with more fertile land in order to ensure that everyone had sufficient food to eat. The Party also considered that these movements would allow it to identify and isolate threats to the building and defending of socialism, including spies, foreign agents, former Khmer Republic officials and those 'New People' who could not be reformed. As noted above, the catastrophic humanitarian situation in which there was insufficient food resulted in significant part from the Party's own actions.[2009] Accordingly, this cannot serve as a justification for movements on the basis of civilian security or military necessity.

635. Even if the above justifications were accepted, the movements during phase two were neither necessary nor proportional. First, there is no evidence that people were returned to their homes or that the majority were afforded any stable residence, even after re-location. Rather, many were constantly re-located between September 1975 and December 1977, some as part of a seasonal workforce.[2010] Second, although there is evidence that some food, accommodation and assistance were provided during or after the transfer, it was not sufficient, if it was provided at all.[2011] People were crowded into trucks, trains and carts, or forced to walk, without hygiene facilities.[2012] During stops, they had to sleep on the ground open to the elements and were provided no mosquito nets, bedding and insufficient food.[2013] Over the course of the

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[2007] *See* Section 11: Movement of the Population (Phase Two), para. 589.
[2008] *See* Section 11: Movement of the Population (Phase Two), paras 595, 599.
[2009] *See* Section 11: Movement of the Population (Phase Two), para. 633; Section 10: Movement of the Population (Phase One), paras 534, 537-540, 541-543, 545.
[2010] *See* Section 11: Movement of the Population (Phase Two), paras 584, 588-589, 607-608, 611-612, 617-619, 622-623, 625.
[2011] *See* Section 11: Movement of the Population (Phase Two), 591, 594, 597.
[2012] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.
[2013] *See* Section 11: Movement of the Population (Phase Two), paras 591-595, 600.

movements, some died from exhaustion or starvation.[2014] After arriving at their assigned work-sites and cooperatives, many were separated from their families, had to build their own homes and were provided no assistance or accommodation in the meantime.[2015] Finally, specifically in relation to those transfers away from the Vietnamese border, the Chamber notes that Khmer Rouge soldiers and officials transferred some of these people either to be re-educated, some of whom disappeared, or to the front lines to work.[2016] This placement of people in situations of high risk undermines any justification based on the security of the population.

636. The Chamber therefore finds that the forced transfers between September 1975 and December 1977 were not justified on the basis of civilian security or military necessity, and, in any event, were neither necessary nor proportional.

637. Transfers during phase two were done pursuant to the plans and policy of the Party, the elements of which were disseminated to all levels of the Khmer Rouge hierarchy.[2017] They were initiated, ordered, carried out by, and under the armed guard of, Khmer Rouge soldiers and officials.[2018] The Chamber therefore finds that they were intentional.

638. The Chamber finds that between September 1975 and early 1977, Khmer Rouge soldiers and officials intentionally and forcibly transferred, without grounds permissible under international law, at least 300,000 to 400,000 lawfully present people from various locations in Kandal, Kampong Thom, Kampong Cham, Takeo, Kampong Speu, Kampong Chhnang, Prey Veng and Svay Rieng Provinces (Central, Southwest, West and East Zones) to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom Province (Central (old North) Zone) and Preah Vihear Province (Sector 103). The Chamber also finds that between September 1975 and December 1977, Khmer Rouge soldiers and officials intentionally and forcibly transferred, without grounds permissible under international law, more than 30,000

[2014] *See* Section 11: Movement of the Population (Phase Two), paras 592, 597-598.
[2015] *See* Section 11: Movement of the Population (Phase Two), paras 601, 612, 617, 619.
[2016] *See* Section 11: Movement of the Population (Phase Two), para. 625.
[2017] *See* Section 11: Movement of the Population (Phase Two), paras 576-577, 584-587, 602-606, 610, 613-616, 621, 625.
[2018] *See* Section 11: Movement of the Population (Phase Two), paras 588, 594-598, 600-601, 608-609, 617-620, 622-623, 625-626.

lawfully present people to Kratie (Sector 505), from and within Prey Veng and Svay Rieng Provinces (East Zone), within Kampong Thom and Kampong Cham Provinces (Central (old North) Zone), and within Battambang Province (Northwest Zone).

639. These transfers were done under inhumane conditions: people were often separated from their families and provided no, or insufficient, comfort, assistance and accommodation.[2019] Many had already been evacuated from cities and towns or between rural regions prior to being transferred again in phase two. The effects and suffering were lasting.[2020] The Chamber therefore finds that Khmer Rouge soldiers caused serious bodily and mental harm to those displaced during phase two and that they intended to do so. These transfers violated numerous rights, including freedom of movement. The Chamber finds that the forced transfers undertaken between September 1975 and 1977 rise to the level of and, as set out below, involved, other crimes against humanity as enumerated in the ECCC Law. In sum, the Chamber finds that Khmer Rouge officials and soldiers committed the crime against humanity of other inhumane acts through forced transfer.

11.6.2. *Enforced Disappearances*

640. Movement of the population (phase two) was characterised by the deprivation of individuals' liberty by State agents. Khmer Rouge soldiers and officials ordered people to depart, transported them under armed guard and in closed vehicles, and chased and arrested those who attempted to escape.[2021] Further, Khmer Rouge soldiers and officials exercised control over all elements of the transfer.[2022] Khmer Rouge soldiers and officials determined how people would be moved, when they would relieve themselves, where and when they would rest, what food and water they would

[2019] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.
[2020] *See* Section 11: Movement of the Population (Phase Two), para. 582.
[2021] *See* Section 11: Movement of the Population (Phase Two), paras 588, 594-598, 600-601, 608-609, 617-620, 622-623, 625-626.
[2022] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.

have, whether their families would remain together, and to what location they would be sent.[2023]

641. These deprivations of liberty were accompanied by a deliberate refusal to provide accurate information regarding the fate or whereabouts of the persons concerned, with Khmer Rouge soldiers and officials providing no or false information concerning their fate or destination.[2024] Some family members later presumed the fate of those displaced, such as when their clothes were re-distributed.[2025] Others heard rumours that people moved away had been killed.[2026] Still others had no clue or indication. It was only after the DK era that many family members and others with special bonds of affection to those displaced were able to confirm presumptions and rumours, or investigate the fate of those displaced.[2027] While the Chamber has not identified any evidence that people affirmatively sought information from the Party as to displaced persons, it is clear that the Khmer Rouge had created an environment in which people were afraid to question or to seek information from the Party.[2028]

642. The Chamber therefore finds that Khmer Rouge officials and soldiers deprived people of their liberty and refused to disclose information regarding the fate or whereabouts of some people transferred from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom (Central (old North) Zone) and Preah Vihear (Sector 103), as well as to Kratie (Sector 505), within Kampong Thom and Kampong Cham (Central (old North) Zone), from and within Svay Rieng and Prey Veng (East Zone) and within Battambang (Northwest Zone).

643. The Chamber is satisfied that these enforced disappearances rise to the level of other crimes against humanity as enumerated in the ECCC Law. They caused great suffering both to those who disappeared, as well as to family members and others with special bonds of affection to those displaced. The Chamber considers that Khmer

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[2023] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.
[2024] *See* Section 11: Movement of the Population (Phase Two), paras 593, 595, 599, 601, 609, 611, 614, 618, 623, 625.
[2025] *See* Section 11: Movement of the Population (Phase Two), paras 593, 595, 599, 601, 609, 611, 614, 618, 623, 625.
[2026] *See* Section 11: Movement of the Population (Phase Two), paras 593, 618, 625
[2027] *See* Section 11: Movement of the Population (Phase Two), para. 623, fn. 1969.
[2028] *See* Section 5: Administrative Structures, para. 199 (on secrecy within the CPK).

Rouge soldiers and officials, with control over all aspects of the movements during phase two, intentionally deprived people of their liberty, intentionally refused to disclose information of their whereabouts and thereby intentionally caused great suffering to those who disappeared, as well as to those who remained behind. The Chamber therefore finds that Khmer Rouge soldiers and officials committed the crime against humanity of other inhumane acts through enforced disappearances.

11.6.3. *Attacks Against Human Dignity*

644. People, many of whom had already lost their property and homes and suffered physically and psychologically during movements before September 1975,[2029] were moved again, often more than once, between September 1975 and December 1977.[2030] During journeys lasting days or weeks, Khmer Rouge soldiers and officials provided insufficient food, water, shelter, medical assistance and hygiene facilities.[2031] Due to these conditions, some died.[2032] Their bodies were disposed of along the way, some thrown out of the windows of moving trains, thereby depriving the families the opportunity to mourn the deceased.[2033] Families were often separated over the course of the population movements.[2034] These conditions were imposed systematically and at all stages of phase two. They caused serious and lasting mental and physical suffering.[2035]

645. The Chamber finds that conditions of transfer from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), Preah Vihear (Sector 103) and Kampong Thom (Central (old North) Zone), as well as to Kratie (Sector 505), within Kampong Thom and Kampong Cham (Central (old North) Zone), from and within Svay Rieng and Prey Veng (East Zone), and within Battambang (Northwest Zone) were intentional, caused serious bodily and mental harm, and rise to the level of other

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[2029] *See* Section 11: Movement of the Population (Phase Two), paras 584, 588-589, 622-623; Movement of the Population (Phase One), paras 522-524.
[2030] *See* Section 11: Movement of the Population (Phase Two), paras 584, 588-589, 607-608, 611-612, 617-619, 622-623, 625.
[2031] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.
[2032] *See* Section 11: Movement of the Population (Phase Two), paras 592, 597-598.
[2033] *See* Section 11: Movement of the Population (Phase Two), paras 592, 597.
[2034] *See* Section 11: Movement of the Population (Phase Two), paras 601, 617.
[2035] *See* Section 11: Movement of the Population (Phase Two), para. 582.

enumerated crimes against humanity. Accordingly, the Chamber finds that Khmer Rouge officials and soldiers committed the crime against humanity of other inhumane acts through attacks against human dignity as defined in the ECCC Law.

11.6.4. ***Extermination***

646. During transfers from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), people died as a result of the inhumane conditions in which they were moved, including as a result of indifference and failure to provide any assistance.[2036] Khmer Rouge soldiers shot others.[2037] The exact number of deaths during movement of the population (phase two) is unknown.

647. However, hundreds of thousands were re-located with insufficient accommodation and assistance and under inhumane conditions. The old, the young and the sick were all moved over the course of days, or as long as a week, without medical assistance, sufficient food or water, no shelter or hygiene facilities either en route or during stops, and in over-crowded trucks and trains.[2038] There is evidence indicating that many died due to starvation, exhaustion and at the hands of their Khmer Rouge guards during different stages and phases of the transfer.[2039] The Chamber therefore considers that the evidence before it of deaths during transfers from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone) is but a representative sample of the total number. The Chamber finds that people died on a massive scale during these movements.

648. During phase one, people were moved under similar conditions, resulting in many deaths.[2040] In this regard, the Chamber notes that the Party leadership ignored the lessons of phase one and took no measures to ensure that people were provided adequate assistance or accommodation during phase two. Additionally, movements during phase two were carried out by many of the same soldiers and officials

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[2036] *See* Section 11: Movement of the Population (Phase Two), paras 592, 594, 597-598.
[2037] *See* Section 11: Movement of the Population (Phase Two), para. 595.
[2038] *See* Section 11: Movement of the Population (Phase Two), paras 591-601, 607-609, 611-612, 617-620, 622-623, 625-626.
[2039] *See* Section 11: Movement of the Population (Phase Two), paras 592, 594-595, 597-598.
[2040] *See* Movement of Population (Phase One), paras 497-498, 521.

responsible for previous movements.[2041] The Chamber accordingly finds that Khmer Rouge soldiers and officials systematically and intentionally imposed conditions on people moved from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone) that would likely lead to death on a massive scale. Accordingly, the Chamber finds that Khmer Rouge soldiers and officials committed the crime against humanity of extermination during transfers from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone).

11.6.5. ***Political Persecution***

649. The particular acts amounting to persecution must be expressly charged.[2042] In determining whether this requirement has been met, the Chamber will have regard to all factual and legal findings in those portions of the Closing Order included within the scope of Case 002/01 and relevant to movement of the population (phase two).[2043]

650. According to the Closing Order, the Khmer Rouge committed persecution in multiple ways: against high-ranking military and civilian officials of the Khmer Republic insofar as they were automatically excluded from the goal of building socialism; against low-ranking officers who were arrested and often executed; and against 'New People' or '17 April people' insofar as they were subjected to harsher treatment with a view to re-education. During population movements, real or perceived enemies of the CPK were subjected to harsher treatment and living conditions with a view to re-educating them or identifying enemies amongst the targeted groups.[2044]

651. In relation to movement of the population (phase two), there is no specific reference to high-ranking or low-ranking Khmer Republic officials as distinct groups targeted for persecution in the relevant findings of the Closing Order. The Chamber

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[2041] *See* The Chamber notes that soldiers responsible for transfers during phase one belonged to the zone and Centre military forces which would later carry out transfers during phase two (Movement of Population (Phase One), para. 460, fn. 1357 (North, Southwest, East and Special Zone forces, among others, 'liberated' Phnom Penh).
[2042] *See* Section 9: Applicable Law: Crimes Against Humanity, para. 431.
[2043] A Chamber should consider a charging instrument as a whole in determining whether it sufficiently pleads the facts and their legal characterisation (*Seromba* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 123).
[2044] Closing Order, paras 1417-1418.

therefore finds that political persecution was not charged against these groups in relation to movement of the population (phase two).

652. The Closing Order alleges that the entire population remaining in the towns after the CPK came to power, including those associated or connected with the Khmer Republic, were labelled as 'New People' and subjected to harsher treatment than 'Old People'.[2045] In relevant part, the Closing Order does not distinguish between the treatment of those associated with the Khmer Republic and the broader category of 'New People'.[2046] The Chamber therefore finds that only political persecution against 'New People', a category including those associated with the Khmer Republic, was charged in connection with movement of the population (phase two). Based on a complete reading of the Closing Order, the Chamber considers that the alleged harsher treatment of 'New People', characterised as re-education, was effected in particular through acts of forced transfer[2047], enforced disappearances.[2048]

653. The Party identified 'New People' as a group politically and socially opposed to the socialist revolution in Cambodia.[2049] Thus 'New People' were singled out by Party policy for re-fashioning.[2050] This policy was disseminated throughout the Party ranks, including to ordinary Khmer Rouge soldiers.[2051] Khmer Rouge soldiers and

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[2045] *See e.g.* Closing Order, paras 227 (People who had originated from Phnom Penh were identified as 'New People'), 1417 (The entire population remaining in the towns after the CPK came to power was labelled as 'New People').

[2046] Closing Order, paras 265 ('New People' and those connected with the LON Nol regime were moved; 1468 (Referring to the targeting, for purpose of forced transfer during movement of population (phase two), of those deemed to be the "actual or potential tansgressors" of CPK objectives including 'New People' and those associated with the LON Nol regime).

[2047] Closing Order, paras 161 (Generally, population movements were carried out for the purpose of, amongst others, depriving city dwellers of their economic and political status and transforming them into peasants), 265 ('New People' and those connected with the LON Nol regime were moved; some witnesses state that only 'New People' were transferred), 901 (NUON Chea was aware of the need to re-locate new people), 1368 (The purpose of movement of population (phase two) was to target 'New People'), 1468 (Referring to the targeting, for purpose of forced transfer during movement of population (phase two), of those deemed to be the "actual or potential tansgressors" of CPK objectives including 'New People' and those associated with the LON Nol regime), 1525(i) (The policy concerning repeated movements of the population included persecution on political grounds as a means of implementation).

[2048] Closing Order, paras 274 (CPK cadres took biographies of the people being moved, some were later transferred for re-education), 270 (mentioning that some people disappeared during the movements and that, according to some evidence, those who refused to leave were sent for reeducation, from where people never returned).

[2049] *See* Section 11: Movement of the Population (Phase Two), paras 613-616, 621.

[2050] *See* Section 11: Movement of the Population (Phase Two), paras 613-616, 621.

[2051] *See* Section 11: Movement of the Population (Phase Two), para. 577.

officials were ordered to administer the 'New People' and 'Old People' separately.[2052] Indeed, at various stages of movement of the population (phase two), Khmer Rouge soldiers and officials questioned people about their history, verifying whether or not people could be qualified as 'New People'.[2053] As this group was identified pursuant to criteria defined by the CPK leadership, and its background was verifiable, as demonstrated by questioning by Khmer Rouge soldiers, the Chamber is satisfied that 'New People' constitutes a sufficiently discernible group.

654. The Chamber has found above that other inhumane acts comprising forced transfers and enforced disappearances have been proven in connection with movement of the population (phase two).[2054] It now considers whether these crimes were discriminatory in fact and deliberately perpetrated with the intent to discriminate.

655. Having regard to the practice during movement of the population (phase two), the Chamber notes that, in many locations, exclusively 'New People' were forcibly transferred,[2055] while, in some locations, both 'Old People' and 'New People' were displaced. These latter displacements occurred for specific reasons, either because of a distrust of the whole population living in the East Zone along the border with Vietnam, or because of the CPK leadership's drive to fill their production quotas.[2056] Before or during population movements, however, Khmer Rouge soldiers and officials questioned people about their history in order to identify 'New People'. This questioning often determined the location to which people would be sent, including to the jungle where they had to clear land and build their own shelter.[2057] Other 'New People' were taken to be re-fashioned or re-educated at security centres.[2058] After some 'New People' were identified at various cooperatives or work-sites, they were transferred and disappeared.[2059]

[2052] *See* Section 11: Movement of the Population (Phase Two), paras 621-622.
[2053] *See* Section 11: Movement of the Population (Phase Two), paras 600, 617.
[2054] *See* Section 11: Movement of the Population (Phase Two), paras 630-643.
[2055] *See* Section 11: Movement of the Population (Phase Two), paras 588, 617-619, 622-623.
[2056] *See* Section 11: Movement of the Population (Phase Two), 585-588, 602-606, 610, 624-625.
[2057] *See* Section 11: Movement of the Population (Phase Two), paras 600-601, 617.
[2058] *See* Section 11: Movement of the Population (Phase Two), 614, 617-619, 622-623.
[2059] *See* Section 11: Movement of the Population (Phase Two), 614, 618, 623.

656. The Chamber is therefore satisfied that Khmer Rouge soldiers and officials intended to discriminate against the 'New People' on political grounds by forcibly transferring specifically 'New People' from certain locations in southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), Preah Vihear (Sector 103) and Kampong Thom (Central (old North) Zone), as well as to Kratie (Sector 505), within Kampong Thom and Kampong Cham (Central (old North) Zone), from and within Svay Rieng and Prey Veng (East Zone), and within Battambang (Northwest Zone). The Chamber is also satisfied that Khmer Rouge soldiers and officials intended to discriminate against 'New People' on political grounds by depriving them of their liberty and refusing to disclose information concerning their whereabouts (enforced disappearances) during movements from certain locations in southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), Preah Vihear (Sector 103) and Kampong Thom (Central (old North) Zone), as well as to Kratie (Sector 505), within Kampong Thom and Kampong Cham (Central (old North) Zone), from and within Svay Rieng and Prey Veng (East Zone), and within Battambang (Northwest Zone).

657. These forced transfers and enforced disappearances violated fundamental rights and freedoms pertaining to movement,[2060] property,[2061] family,[2062] life[2063] and personal dignity.[2064] The Chamber is satisfied that these other inhumane acts, which are crimes against humanity in their own right, rise to the requisite level of severity such as to constitute persecution. The Chamber finds that Khmer Rouge soldiers and officials intentionally discriminated in fact against 'New People' on political grounds. The Chamber therefore finds that Khmer Rouge soldiers and officials committed the crime against humanity of persecution through the other inhumane acts of forced transfer and enforced disappearances.

[2060] Geneva Convention (IV), Art. 49; Universal Declaration on Human Rights, Art. 13; Racial Discrimination Convention, Art. 5(d)(i); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5); *See also, Stakić* Appeal Judgement, para. 317.

[2061] Geneva Convention (IV), Arts. 33, 53, 97-98, 114; Universal Declaration on Human Rights, Art. 17(2); Racial Discrimination Convention, Art. 5(d)(v); ECHR Protocol No. 1, Art. 1; ACHR, Art. 21; *See also, Blaškić* Appeal Judgement, para. 145.

[2062] Geneva Convention (IV), Arts. 27, 49, 82; Universal Declaration on Human Rights, Arts. 12, 16; ICCPR, Arts. 17, 23; ECHR, Arts. 8, 12; ACHR, Art. 17.

[2063] Geneva Convention (IV), Art. 3(1)(a); Universal Declaration on Human Rights, Art. 3(1)(a); Racial Discrimination Convention, Art. 5(b); ICCPR, Art. 6; ECHR, Art. 2; ACHR, Art. 4; *See also, Kordić and Čerkez* Appeal Judgement, para. 106.

[2064] Geneva Convention (IV), Art. 3(1)(c); Universal Declaration on Human Rights, Arts. 1, 22, 23(3); Racial Discrimination Convention, Art. 5; ICCPR, Arts. 7, 10; ACHR, Arts. 5-6; *See also, Kordić and Čerkez* Appeal Judgement, para. 106.

12. TUOL PO CHREY

658. As relevant to Case 002/01,[2065] the Closing Order alleges that from late April 1975 Tuol Po Chrey was used as an execution site at which large-scale killings of the former military and civilian population were carried out. The site is described as including a former Khmer Republic military fort (known as the Po Village Fort) and a lake where bodies were dumped. Tuol Po Chrey was located in Kandieng District, Sector 7, North-west Zone.[2066]

659. According to the Closing Order, in the days after Pursat Province was captured by the North-west Zone Military in April 1975, the Pursat provincial governor and soldiers and civil servants of the former LON Nol regime were invited to attend a meeting at Pursat provincial town-hall. Senior Khmer Rouge leaders of the North-west Zone Committee, the Sector 7 Committee and the Kandieng District Committee also attended the meeting. The approximately 3,000 former LON Nol officials in attendance were told they were to undergo study to be reintegrated into the new army structure. On this understanding, the participants voluntarily boarded trucks after the meeting and were taken to Tuol Po Chrey where they were executed. These executions were carried out pursuant to an order from Ta Nhim[2067] and Ta Sot[2068] that all "dignitaries, both military and police" of the LON Nol regime were to be killed.[2069]

660. Three witnesses testified before the Chamber about this event. Witness LIM Sat, Khmer Rouge deputy commander of a platoon, participated in fighting against

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[2065] The Chamber notes that only executions committed at Tuol Po Chrey in the aftermath of the evacuation of Phnom Penh fall within the scope of Case 002/01. The Chamber will not adjudicate on killings that occurred at Tuol Po Chrey in later years: *see* Notification of Decision on Co-Prosecutors' request to include additional crime sites within the scope of trial in Case 002/01 (E163), E163/5, 8 October 2012, para. 3; Trial Chamber Decision on Severance following SCC Decision, E284, 26 April 2013, p. 70.

[2066] Closing Order, paras 698-700, 704.

[2067] *See* Section 5: Administrative Structures, para. 219 (on Ta Nhim).

[2068] According to the Closing Order, Ta Sot was the Secretary of Sector 7, arrested and transferred to S21 in July 1977. *See* UNG Chhat Interview Record, E3/4598, E3/5774, 31 January 2009, p. 3, ERN (En) 00284417 (identifies Ta Sot as the Secretary of Sector 7); LIM Sat Interview Record, E3/4601, 18 November 2009, p. 2, ERN (En) 00412157 (Sector 7 committee's name was Ta Sot); LIM Sat Interview Record, E3/5723, 20 May 2011, p. 3, ERN (En) 00708139 (Ta Sot was the Secretary of Sector 7 until 1976); SUY Seng Chhorn Interview Record, E3/4638, 11 June 2008, p. 2, ERN (En) 00242117 (Ta Soth was the first secretary of the Sector); SUM Alat Interview Record, E3/4637, 10 June 2008, pp. 5, 7, ERN (En) 00242126, 00242128 (the Sector secretary was called Soth).

[2069] Closing Order, paras 702, 705-711.

LON Nol soldiers in Pursat Province; Witness SUM Alat, a LON Nol soldier, was stationed at Svay Doun Keo battlefield at the time the LON Nol forces surrendered; and Witness UNG Chhat, a Khmer Rouge soldier, guarded the entrance of the provincial headquarters in Pursat during the days following the capture of Pursat by the Khmer Rouge.[2070]

12.1. Defeat of Pursat Province and Zone Committee Meeting

661. For three to four years, Khmer Rouge forces under the command of the North-west Zone Commander Ta Khleng had been involved in fighting to capture Pursat Province from LON Nol soldiers,[2071] led by Commander Pel and Deputy Commander Run.[2072] During this time, there were many fortresses throughout Pursat Province where LON Nol soldiers were stationed.[2073] Prior to 17 April 1975, Khmer Rouge deputy commander LIM Sat and his forces were also stationed in the area and engaged in combat at the fort of Tuol Po Chrey.[2074] Tuol Po Chrey, where an estimated 30 to 200 LON Nol soldiers were positioned, was one scene of fighting between the opposing forces.[2075]

662. Although the exact date is uncertain, the Khmer Rouge captured and took control of Pursat Province shortly after Phnom Penh was seized on 17 April 1975.[2076] In a radio announcement broadcast on 17 April 1975 from Phnom Penh and heard in

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[2070] LIM Sat testified before the Chamber on 2 and 3 May 2013; SUM Alat on 3 and 4 July 2013, and UNG Chhat on 29 and 30 April 2013.

[2071] T. 2 May 2013 (LIM Sat), pp. 7-8, 12, 85; T. 4 July 2013 (SUM Alat), pp. 4-6; T. 30 April 2013 (UNG Chhat), pp. 41-42, 43-44.

[2072] T. 2 May 2013 (LIM Sat), pp. 13, 88. Although SUM Alat, a LON Nol soldier, did not know who Commander Pel and Deputy Commander Run were, the Chamber accepts his explanation that he was stationed at Svay Doun Keo battlefield, near the border between Pursat and Battambang such that he would not have a reason to know who the commanders at Po Chrey were: T. 4 July 2013 (SUM Alat), pp. 65-67. As concerns the spelling of the name of the deputy commander, the Chamber relies upon the Khmer transcript of 2 May 2013, being the language in which the Witness LIM Sat testified. The Khmer transcript refers to Deputy Commander Run, not Rum as reflected in the English version, or Roun as reflected in the French version.

[2073] T. 2 May 2013 (LIM Sat), pp. 87-88.

[2074] T. 2 May 2013 (LIM Sat), pp. 66, 86.

[2075] T. 4 July 2013 (SUM Alat), pp. 23-24 (The LON Nol regime had a military base close to Tuol Po Chrey comprising three squads of between 30-40 soldiers); T. 2 May 2013 (LIM Sat), pp. 13, 86-87; T. 3 May 2013 (LIM Sat), p. 3 (estimating there were around 100 LON Nol soldiers); T. 30 April 2013 (UNG Chhat), p. 46 (estimating there could have been around 200 soldiers).

[2076] T. 2 May 2013 (LIM Sat), p. 12; T. 3 May 2013 (LIM Sat), p. 2 (stating this occurred at around 11:00 a.m. on 17 April 1975, after three to four years of fighting); T. 4 July 2013 (SUM Alat), pp. 41-42 (17 April 1975, the same day as Phnom Penh); T. 29 April 2013 (UNG Chhat), pp. 70-71 (*citing* UNG Chhat Interview Record, E3/4598, E3/5774, stating this occurred on 19 April 1975).

various places in Cambodia, General MEY Sichan, the representative of the LON Nol army, called for LON Nol soldiers throughout Cambodia to surrender.[2077] Following the announcement, LON Nol soldiers in SUM Alat's unit in Svay Doun Keo, on the border between Pursat and Battambang Provinces, raised a white flag, laid down their arms and joined the Khmer Rouge in a celebratory event.[2078] According to LIM Sat, he personally saw the LON Nol soldiers at the Tuol Po Chrey fort also surrender by raising white flags in all the barracks, after which the Khmer Rouge collected their weapons.[2079] The LON Nol soldiers at the fort were not permitted to leave and remained there in their military uniforms.[2080]

663. According to LIM Sat, Khmer Rouge Zone Committee and the Sector Committee's members held an internal meeting in the days following the capture of Pursat Province[2081] at which Ta Nhim and Ta Kan the Zone Committee chairman and deputy chairman Ta Sot, a Sector secretary,[2082] gave orders to Khmer Rouge commanders that soldiers and policemen from the LON Nol administration were to be "assembled" and killed.[2083] Although LIM Sat did not attend that meeting, he received orders immediately after it from his RAK regiment commander, Commander

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[2077] *Government General Invites Other Side's Envoy to Phnom Penh* (in FBIS Collection), E3/118, 17 April 1975, ERN (En) 00166974; T. 6 December 2012 (HUN Chhunly), p. 36; T. 7 December 2012 (HUN Chhunly), p. 40; T. 4 July 2013 (SUM Alat), p. 6.

[2078] T. 4 July 2013 (SUM Alat), pp. 6-7, 9-10, 60-61.

[2079] T. 3 May 2013 (LIM Sat), pp. 2-4.

[2080] T. 3 May 2013 (LIM Sat), pp. 3-5, 20. *See also*, T. 4 July 2013 (SUM Alat), p. 65 (in the period between the Khmer Rouge take-over and the first town-hall meeting the LON Nol soldiers remained at their workplace to receive orders).

[2081] T. 2 May 2013 (LIM Sat), pp. 21, 48-49. *See also*, T. 2 May 2013 (LIM Sat), pp. 19-20; LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759 (it was about 19 or 20 April 1975); LIM Sat Interview Record, E3/4601, 18 November 2009, p. 3, ERN (En) 00412158 (four to five days after the liberation of Phnom Penh).

[2082] Concerning Ta Nhim, *see* Section 5: Administrative Structures, para. 219. Concerning Ta Khan, *see* T. 2 May 2013 (LIM Sat), p. 81 (Ta Kan was from the Zone Committee); LIM Sat Interview Record, E3/4601, 18 November 2009, p. 2, ERN (En) 00412157 (identifies Ta Kan as deputy chairman of the Zone Committee). *See also*, KAING Guek Eav Interview Record, E3/394, 22 October 2009, p. 7, ERN (En) 00398234 (identifying Ta Keu [*sic*] as KUNG Sophal, Deputy Secretary of the North-west Zone); LIM Sat Interview Record, E3/364, 23 November 2008, p. 3, ERN (En) 00250760 (Ta Kan was "the Zone Com").

[2083] T. 2 May 2013 (LIM Sat), pp. 17 (identifying Ta Nhim and Ta Khan), 48 (*citing* LIM Sat Interview Record, E3/4601, p. 3, ERN (En) 00412158, identifying Ta Nhim and Ta Sot); T. 3 May 2013 (LIM Sat), p. 19 (*citing* LIM Sat Interview Record, E3/364, noting instructions to assemble and kill), 21-22 (concerning only instructions to assemble).

Huon.[2084]

664. According to LIM Sat's Interview Record, these orders were to assemble and then kill the LON Nol officials.[2085] Later at trial however, he claimed that he did not know that the LON Nol officials were to be killed,[2086] and that Commander Huon's orders were limited to assembling soldiers and policemen with connections to the LON Nol era in order for them to attend a study session, after which those who worked at the Centre level would be permitted to resume their previous functions.[2087]

665. LIM Sat, who guarded the subsequent meeting, was the only witness to testify about these orders. The Chamber is conscious that he may be motivated to diminish or shift responsibility for his involvement in the events in question. The Chamber does not find the testimony of LIM Sat concerning his limited knowledge of the criminal purpose of the orders to be credible. However, his initial evidence before the Co-Investigating Judges as to the content of the orders is corroborated by evidence of a pattern of conduct. After the capture of towns by the Khmer Rouge former LON Nol officials were called to meetings characterised as study sessions or as opportunities to meet Prince Sihanouk, and were subsequently executed.[2088] Further, LIM Sat's evidence as to the way in which orders received from the 'upper echelon' were disseminated also accords with the Chamber's findings on Communication Structures.[2089] The Chamber consequently finds his testimony as to the substance of these orders to be credible.

[2084] T. 2 May 2013 (LIM Sat), pp. 23-24, 48-49 (*citing* LIM Sat Interview Record, E3/4601); T. 3 May 2013 (LIM Sat), p. 19; LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759.

[2085] LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759 ("I received orders to assemble the soldiers and policemen from low to high rank who had connections to the LON Nol era and kill them at Banteay Pochrey in Kandieng District."). *See also,* LIM Sat Interview Record, E3/4601, 18 November 2009, p. 3, ERN (En) 00412158 (in that meeting, Khmer Rouge chairmen were told that all dignitaries, both military and policemen, from LON Nol regime had to be killed).

[2086] T. 2 May 2013 (LIM Sat), p. 19; T. 3 May 2013 (LIM Sat), p. 25.

[2087] T. 2 May 2013 (LIM Sat), pp. 23-24, 48-49 (*citing* LIM Sat Interview Record, E3/4601); T. 3 May 2013 (LIM Sat), pp. 19, 25; LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759.

[2088] *See* Section 3: Historical Background, paras 117-118; Section 10: Movement of the Population (Phase One), paras 503, 511, 514.

[2089] T. 2 May 2013 (LIM Sat), p. 9 (explaining that orders would come from the Upper Echelon to the Zone who rendered the orders to the units who would carry out the orders); T. 3 May 2013 (LIM Sat), p. 19 (orders came from the Zone Committee and were rendered down to the Sector Committee and further). *See* Section 6: Communication Structure, para. 286, fn. 893.

666. Former LON Nol soldiers were later invited to join a meeting at Pursat provincial town-hall presided over by Ta Nhim and Ta Kan of the Zone Committee and Ta Sot of the Sector Committee.[2090] The invitation was relayed to the provincial governor and LON Nol leaders who in turn conveyed it to their respective subordinates by word of mouth and announcements.[2091]

12.2. Meeting(s) with LON Nol officials at Pursat provincial town-hall

667. The Chamber heard evidence from SUM Alat, LIM Sat and UNG Chhat about the subsequent meetings at Pursat provincial town-hall. SUM Alat, a low-ranking former LON Nol soldier at the time of the events was the only witness to have attended the meetings.[2092] His evidence as to the subject matter of the meetings and the participants is detailed and reliable. His evidence concerning promises made to the LON Nol officials at the meetings and their subsequent transfers to Tuol Po Chrey was corroborated by UNG Chhat, a Khmer Rouge soldier, and LIM Sat.[2093] SUM Alat testified about meetings over two consecutive days. Although LIM Sat and UNG Chhat spoke of events during the course of only one day, their testimony indicates that there were meetings over at least two days.[2094] Having regard to the substance of

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[2090] T. 2 May 2013 (LIM Sat), pp. 22-23 (*citing* LIM Sat Interview Record, E3/4601, p. 3, ERN (En) 00412158, identifying Ta Nhim, Ta Kan and Ta Sot).

[2091] T. 3 May 2013 (LIM Sat), pp. 20 (the message was passed to the group leaders who then relayed it to their subordinates and soldiers), 21-22, 23; T. 4 July 2013 (SUM Alat), p. 64 (heard through word of mouth); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province, heard the Khmer Rouge announce that the LON Nol soldiers were to go study); HEM Saran Civil Party Application, E3/4808, 7 November 2008, p. 3, ERN (En) 00891197 (living in Pursat Province, he heard the Khmer Rouge announce through a microphone that former soldiers, police and civil servants should come to Pursat provincial hall to discuss pursuing further studies). *See also*, SUM Alat Interview Record, E3/4637, 10 June 2008, p. 5, ERN (En) 00242126 (Sector Secretary Sot called general PRUM Li Huon, Pursat provincial governor, to meet at the provincial town-hall office).

[2092] T. 4 July 2013 (SUM Alat), pp. 2, 59.

[2093] UNG Chhat asked some of his colleagues and people who attended about the content of the meeting, and they told him they were promised study-sessions which would offer them a chance to be promoted to a higher rank: T. 29 April 2013 (UNG Chhat), p. 80; T. 30 April 2013 (UNG Chhat), pp. 35, 59. LIM Sat did not attend this meeting but learned of its content from the commander of his regiment, Commander Huon: T. 2 May 2013 (LIM Sat), p. 23 (*citing* LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759, that they were tricked as they were promised to obtain their previous ranks in the meeting). Although the French translation of LIM Sat's Interview Record omits any reference to deception, LIM Sat's original Interview Record in Khmer also states the attendees were deceived: *see* ERN (Kh) 00242422, ERN (Fr) 00282197.

[2094] T. 4 July 2013 (SUM Alat), pp. 20, 27-28; T. 3 May 2013 (LIM Sat), pp. 10 (people were told earlier that they would be attending a study session and they prepared for the session; they could not go there empty handed), 22 (there was a meeting where they were told they would be sent for a study session and to prepare their belongings, the information was not just to prepare and to leave

their testimony, the Chamber is also satisfied that the events recounted by LIM Sat and UNG Chhat occurred on the second day about which SUM Alat testified.

668. According to SUM Alat, the provincial government and LON Nol military continued to function as usual after the Khmer Rouge take-over of Pursat Province on or around 17 April 1975, and some LON Nol soldiers continued to wear their uniforms.[2095] Approximately one week after 17 April 1975, *i.e.*, on or around 24 April 1975, LON Nol officials attended the announced meeting at Pursat provincial town-hall.[2096] Although many were brought to the meeting by Khmer Rouge units, evidence suggests that attendance was nonetheless voluntary.[2097]

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immediately); T. 30 April 2013 (UNG Chhat), p. 56 (could not remember how long the meeting lasted, it could have been one or two days). *See also*, CHEY Yan Civil Party Application, E3/4857, 14 June 2010, p. 1, ERN (En) 00888492 (a resident of then Bakan District, stated civil servants were called to join a study session for three days); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 9'66 (the driver stated the soldiers were teasing each other, "What's your wife packed for you?").

[2095] T. 4 July 2013 (SUM Alat), pp. 62, 64-65. Although SUM Alat, who had been based in Svay Doun Keo, on the border between Pursat and Battambang Provinces, testified that when Khmer Rouge forces liberated the area, he removed his LON Nol uniform once he arrived in Svay Luong fearing that if someone saw his uniform he would be killed: T. 4 July 2013 (SUM Alat), pp. 7, 10-12, 98.

[2096] T. 2 May 2013 (LIM Sat), pp. 20-21; T. 4 July 2013 (SUM Alat), pp. 42, 63 (it was about 2 weeks after 17 April 1975, on either 24 or 25 April). *cf.* Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 9'26 (an unidentified male who was a former driver of the trucks that drove the soldiers to Tuol Po Chrey stated this occurred on the third day after liberation). Notwithstanding UNG Chhat placed the meeting around 19 April 1975, the day he entered the Province, he later acknowledged he had been in Pursat for a few days before the meetings took place: T. 29 April 2013 (UNG Chhat), p. 74; T. 30 April 2013 (UNG Chhat), pp. 55-56. His testimony therefore supports that of LIM Sat and SUM Alat regarding the timing of the meeting and the Chamber is satisfied that a meeting took place on or around 24 April 1975.

[2097] T. 2 May 2013 (LIM Sat), pp. 21-23 (*citing* LIM Sat Interview Record, E3/364, stating that all the LON Nol soldiers and officials were brought to the Pursat provincial hall by truck for the announced meeting), 72 (stating he was not in charge of gathering soldiers, others were); T. 29 April 2013 (UNG Chhat), pp. 80-81 (saw the soldiers brought to the town-hall in trucks). *See also*, ORK Choem Interview Record, E3/5500, 22 August 2009, pp. 2-3, ERN (En) 00367287-88 (a farmer in the hospital at Pursat at the time, saw the Khmer Rouge gather up the soldiers to meet at the provincial headquarters although some government officials and soldiers came in their personal vehicles); HEM Saran Civil Party Application, E3/4808, 7 November 2008, p. 3, ERN (En) 00891197 (living in Pursat Province, he stated the Khmer Rouge sent military trucks to pick up those coming to the meeting); UN Pon Civil Party Application, E3/5344, 22 May 2008, p. 6, ERN (En) 00883880 (a resident of Bakan District, Pursat Province, he saw Khmer Rouge soldiers gather former LON Nol commanders and soldiers from Svay At village, Bakan District).
As to the voluntary nature of attendance, *see*: T. 3 May 2013 (LIM Sat), pp. 20, 21-22 (Khmer Rouge troops did not physically round up the soldiers, rather the LON Nol officials who heard the announcements to attend the provincial hall meeting would go); T. 4 July 2013 (SUM Alat), pp. 15-16 (a LON Nol soldier, found out about the meeting through the lines of communication maintained by the LON Nol regime and followed his colleagues to the meeting); T. 29 April 2013 (UNG Chhat), p. 81 (some came to the meeting by their own means).

669. While there are inconsistencies in the evidence regarding the number of attendees[2098] and the presence of civilians at the meeting(s),[2099] the Chamber notes that given the passage of time since the events in question, memories may vary to a certain extent. However, with the exception of LIM Sat's testimony on the particular issue of the number of attendees, the evidence clearly establishes that at a minimum, several hundred people, including civilians, attended the town-hall meeting. All of the estimates provided however, fall short of the 3,000 attendees cited in the Closing Order.[2100]

670. The first meeting started at 2 p.m. and lasted two to three hours during which the attendees were educated about the policy of reconciliation and country-building and were urged to trust the Khmer Rouge concerning a forthcoming meeting with Angkar at Tuol Po Chrey.[2101] Everyone was then told to meet again the following day, either 25 or 26 April 1975, so that they could be sent all together to be received by

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[2098] While SUM Alat estimated there were around 500 attendees at the provincial hall on each day, UNG Chhat determined there were around 200 LON Nol soldiers and some civilians in the provincial hall: T. 4 July 2013 (SUM Alat), pp. 14-15 (*citing* SUM Alat Interview Record, E3/4637), 16-17, 28, 76-77, 82-83; T. 29 April 2013 (UNG Chhat), pp. 80, 82-83; T. 30 April 2013 (UNG Chhat), p. 61. In contrast, LIM Sat who was on guard about five kilometres away when the LON Nol soldiers arrived at the provincial hall estimated he saw 30 to 40 military trucks pass along the road to the town-hall, each able to accommodate at least 30 people: T. 2 May 2013 (LIM Sat), pp. 21-22 (*citing* LIM Sat Interview Record, E3/364). LIM Sat later testified there were only 10 to 15 trucks, but acknowledged this number did not seem correct: T. 2 May 2013 (LIM Sat), pp. 71-73. *See also*, CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 3, ERN (En) 00288200 (a former LON Nol soldier from Phnom Penh who had been sent to work at Po 2 village in Pursat Province after 17 April 1975, estimated that white military trucks transporting LON Nol soldiers to Tuol Po Chrey that he saw about one month after the liberation of Phnom Penh could fit 30 people per truck); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province who saw the trucks, estimated each truck could hold 40 people).

[2099] LIM Sat testified the gathering was meant only for soldiers who were in Pursat and civilians had no business there: T. 3 May 2013 (LIM Sat), pp. 22-23, 28-29. SUM Alat attested to the presence of all former LON Nol officials, both soldiers and civilians. Of the 500 attendees, SUM Alat estimated more than 200 were LON Nol soldiers from different military units from throughout Pursat Province among whom were also the 30 LON Nol soldiers based at Tuol Po Chrey: T. 4 July 2013 (SUM Alat), pp. 14-15 (*citing* SUM Alat Interview Record, E3/4637), 16-18, 23-24, 28, 76-79, 82-83, 85. UNG Chhat also testified about the presence of civilians in the provincial town-hall: T. 29 April 2013 (UNG Chhat), pp. 80, 82-83; T. 30. April 2013 (UNG Chhat), p. 61. *See also*, ORK Choem Interview Record, E3/5500, 22 August 2009, p. 2, ERN (En) 00367287 (a farmer in the hospital at Pursat at the time, saw LON Nol soldiers and government officials were present); CHEY Yan Civil Party Application, E3/4857, 14 June 2010, p. 1, ERN (En) 00888492 (a resident of then Bakan District stated civil servants, including her husband, were taken to join a study session and soldiers were executed); DC-Cam Document: *Mapping the Killing Fields of Cambodia: khet Pursat*, E3/2066, 1997, ERN (En) 00078061 (*noting* that during the first phase in 1975, the Pursat governor, district and commune chiefs, officers, and soldiers of all ranks throughout Pursat Province were gathered to be killed).

[2100] Closing Order, para. 708 (*citing* LIM Sat Interview Record, E3/364, 23 November 2008, p. 2, ERN (En) 00250759).

[2101] T. 4 July 2013 (SUM Alat), pp. 14-15 (*citing* SUM Alat Interview Record, E3/4637), 20.

Angkar.[2102] SUM Alat felt optimistic after that first meeting. He and the other meeting's participants, fed up with fighting, felt that meeting Angkar would provide an opportunity to reconcile and build the country.[2103] Consequently, SUM Alat and the other attendees went to the meeting the following day.[2104]

671. Top Khmer Rouge leaders, armed and wearing black clothes, attended the first meeting. Among them were Ta Tauy, the deputy secretary of Sector 7,[2105] and Ta Sot, the head of Sector 7. Ta Sot attended both meetings but only spoke during the first.[2106] Ta Kan from the Zone Committee and Ta Vanh,[2107] as well as representatives from the sector committee, also attended although it is not clear whether they attended one or both meetings.[2108] No one on the LON Nol side was armed.[2109]

672. Both LIM Sat and UNG Chhat were outside the town-hall during the second meeting[2110] after which the 'upper authority' gave notice to the Khmer Rouge guards to take those attending the meeting to a site near the Tonle Sap River for re-education sessions, so they could then return to their former occupations.[2111] Commander Huon

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[2102] T. 4 July 2013 (SUM Alat), p. 20.
[2103] T. 4 July 2013 (SUM Alat), pp. 21-22.
[2104] T. 4 July 2013 (SUM Alat), pp. 28, 82-83, 85 (indicating that the meeting lasted 2 to 3 hours); T. 29 April 2013 (UNG Chhat), p. 80 (indicating that the meeting lasted 3 or four hours or so).
[2105] Also referred to as Ta Tuoy. *See* SUY Seng Chhorn Interview Record, E3/4638, 11 June 2008, p. 2, ERN (En) 00242117 (Ta Tuoy was the Sector deputy secretary until 1978); UNG Chhat Interview Record, E3/4598, E3/5774, 31 January 2009, p. 3, ERN (En) 00284417 (Ta Tauy was the deputy secretary of sector 7).
[2106] T. 4 July 2013 (SUM Alat), pp. 19 (there were about five to seven top Khmer Rouge leaders of whom he recognised only Ta Sot, the sector secretary), 85-87 (saw them standing near Ta Sot wearing proper hats from which he deduced only top leaders could be wearing such uniforms or clothes; he did not take good notice of other people who had the floor); T. 30 April 2013 (UNG Chhat), pp. 33 (there was also another man named Tauy although he did not know him clearly), 35, 67 (Ta Sot and Ta Tauy, members of the sector committee, attended the meeting, although he had never met them in person; he had only heard they were the commanders of the sector at that time); T. 2 May 2013 (LIM Sat), p. 18 (Ta Sot was the head of sector 7; he knew people from the Zone and the Sector were present).
[2107] LIM Sat identified Ta Vanh as the face of the Sector 2 Committee in his second interview, although in his third interview and at trial, he stated Ta Vanh was a member of the Zone Committee: LIM Sat Interview Record, E3/4601, 18 November 2009, p. 2, ERN (En) 00412157 (sector committee); *cf.* T. 2 May 2013 (LIM Sat), p. 81 (zone committee); LIM Sat Interview Record, E3/5723, 20 May 2011, p. 3, ERN (En) 00708139 (zone committee).
[2108] T. 2 May 2013 (LIM Sat), p. 81.
[2109] T. 4 July 2013 (SUM Alat), p. 19. *See also,* SUY Seng Chhorn Interview Record, E3/4638, 11 June 2008, p. 4, ERN (En) 00242119.
[2110] T. 2 May 2013 (LIM Sat), pp. 19, 82; T. 3 May 2013 (LIM Sat), p. 25 (he was on the street guarding the trucks); T. 29 April 2013 (UNG Chhat), pp. 79-80, 84; T. 30 April 2013 (UNG Chhat), pp. 34, 56-57, 59, 65, 71 (he was standing outside and guarding the provincial hall).
[2111] T. 29 April 2013 (UNG Chhat), p. 80; T. 3 May 2013 (LIM Sat), p. 25 (he was only told that that the officers would be sent for a study session). *See also,* ORK Choem Interview Record, E3/5500, 22 August 2009, p. 2, ERN (En) 00367287 (a farmer in the hospital at Pursat at the time, stated Khmer

told LIM Sat that the LON Nol police and soldiers were called to attend the meeting because the Khmer Rouge were afraid that the police and soldiers would revolt against them.[2112] As they left the provincial town-hall, the LON Nol soldiers told their relatives that they were to meet Prince NORODOM Sihanouk.[2113]

12.3. Transfer to Tuol Po Chrey

673. Immediately after the second meeting concluded, the LON Nol officials were loaded onto trucks, including military trucks,[2114] and purportedly taken for re-education.[2115] So many were eager to attend the reception with Angkar that there were not enough trucks to accommodate everyone, including SUM Alat.[2116]

Rouge announced by loudspeakers that government officials and soldiers were to go study); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer in Pursat Province at the time, stated they announced the LON Nol soldiers would go study at Angkor Wat after which they would be promoted); DC-Cam Document: *Mapping the Killing Fields of Cambodia: khet Pursat*, E3/2066, 1997, ERN (En) 00078061 (noting that the killing site is 6 km from Tonle Sap lake), 00078061 (*noting* that during the first phase in 1975 "Pol Pot's men" deceived people into thinking that top-level Angkar were allowing them to follow a transitional course of study, and to meet with top leaders, after which people were to be able to resume their former occupations); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 1'50 (unidentified male said they were taken for training but they were killed), 2'09-2'13 (an unidentified male said they said soldiers at the rank of Colonel would be sent to study so everyone was trying to climb aboard the trucks), 9'41-9'47 (an unidentified male driver of one of the trucks that drove the soldiers to Tuol Po Chrey stated they thought they would only be away a few nights and after meeting the Prince they would return to their old jobs), 16'44 (an unidentified male driver of one of the trucks that drove soldiers to Tuol Po Chrey stated the soldiers wanted to meet the Prince to be promoted).

[2112] T. 2 May 2013 (LIM Sat), pp. 23-24. *See also*, LIM Sat Interview Record, E3/4601, 18 November 2009, p. 3, ERN (En) 00412158 (stated that Khmer Rouge chairmen were told that all dignitaries, both military and policemen, from the LON Nol regime had to be killed so as to avoid resistance at a later time).

[2113] T. 30 April 2013 (UNG Chhat), pp. 3-4, 59. *See also*, TES Bopha Civil Party Application, E3/4811, 6 April 2010, p. 2, ERN (En) 00893346 (a former civil servant stated that after the Khmer Rouge seized power in Pursat Province they announced "we" would study for three days to welcome Samdech NORODOM Sihanouk; having heard that those invited to study were killed, she and her husband, also a civil servant, concealed their backgrounds from the Khmer Rouge).

[2114] T. 2 May 2013 (LIM Sat), pp. 29-30 (described as private military trucks); T. 3 May 2013 (LIM Sat), pp. 9-11, 12 (described both military and civilian trucks used for transporting goods; the trucks were not completely covered at the back); T. 4 July 2013 (SUM Alat), p. 29 (the trucks were Australian trucks donated to the military, wide, with nets on the side). *See also*, CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 3, ERN (En) 00288200 (described white military trucks that were covered); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province, saw Khmer Rouge transporting soldiers in various types of military trucks and stated there were many trucks of all types).

[2115] T. 29 April 2013 (UNG Chhat), p. 81; T. 30 April 2013 (UNG Chhat), pp. 4, 35, 70; T. 2 May 2013 (LIM Sat), pp. 24, 30 (*citing* LIM Sat Interview Record, E3/4601); T. 4 July 2013 (SUM Alat), pp. 25-27, 89 (after the second meeting about which he testified).

[2116] T. 4 July 2013 (SUM Alat), pp. 24-25 (*citing* SUM Alat Interview Record, E3/4637), 26-29; UN Pon Civil Party Application, E3/5344, 22 May 2008, p. 6, ERN (En) 00883880 (*noting* that the soldiers

674. The trucks were driven by the drivers from the Zone.[2117] The Zone Commander, Ta Khleng, chose Tuol Po Chrey as the location to assemble the LON Nol soldiers and policemen.[2118]

675. The transfers from the town-hall to Tuol Po Chrey lasted the whole day,[2119] and involved several trips.[2120] LIM Sat's unit received orders via radio from Khmer Rouge soldiers at Tuol Po Chrey fort to send on more trucks after the previous ones had left.[2121]

676. The evidence as to the number of trucks involved in the transfer varied from six to eight trucks according to LIM Sat's lowest estimatee, to 100 trucks in the opinion of a local farmer.[2122] LIM Sat's various figures (which ranged from six to 15) as to the number of trucks involved in the transfer is inconsistent with his estimate that close to 2,000 LON Nol soldiers were transported to Tuol Po Chrey.[2123] Insofar as

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he saw looked happy). *See also*, Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 2'09-2'13 (an unidentified male speaker stated 'they said soldiers at the rank of Colonel would be sent to study so everyone was trying to climb aboard the trucks').

[2117] T. 2 May 2013 (LIM Sat), p. 30.

[2118] T. 2 May 2013 (LIM Sat), p. 19.

[2119] T. 2 May 2013 (LIM Sat), p. 30 (from 9 a.m. to 5 p.m.); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province, saw the Khmer Rouge transport the soldiers for one whole day, morning to evening). *cf.* Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 9'09 (an unidentified male from the 'Preventive Unit' said they started hearing trucks approaching [Tuol Po Chrey] at 7 a.m.). *See also*, ORK Choem Interview Record, E3/5500, 22 August 2009, p. 2, ERN (En) 00367287 (a farmer in the hospital at Pursat at the time, stated the meeting was called at around 9 a.m.).

[2120] According to LIM Sat, two trucks left the town-hall at a time, and the same military trucks returned on three or four occasions while he was at his post: T. 2 May 2013 (LIM Sat), pp. 24, 29-30. In contrast, SUM Alat testified that the trucks left the provincial town-hall in a column and, after waiting for two hours for a second trip to be organised which did not materialise, he and the other 50 to 60 people who had remained behind returned home: T. 4 July 2013 (SUM Alat), pp. 31-32, 37. While SUM Alat did not remain at the town-hall long enough to witness a second transfer, his evidence corroborates that of LIM Sat that there were to be repeat transfers to Tuol Po Chrey.

[2121] T. 2 May 2013 (LIM Sat), pp. 26-27; T. 3 May 2013 (LIM Sat), p. 11.

[2122] LIM Sat testified variously that six to eight trucks and then 10 to 15 trucks were used in the transfers: T. 2 May 2013 (LIM Sat), pp. 24, 29-31 (he claimed two trucks left the town-hall at a time, and he saw three or four rounds of empty trucks return from Tuol Po Chrey to the town-hall before he left duty that day); *cf.* T. 2 May 2013 (LIM Sat), pp. 31, 51, 71-72; T. 3 May 2013 (LIM Sat), p. 15 (testified that about 10 to 15 trucks transported police and soldiers from the provincial hall to Tuol Po Chrey). *See also*, SUY Seng Chhorn Interview Record, E3/4638, 11 June 2008, p. 4, ERN (En) 00242119 (a local farmer in Bakan District, Pursat Province, he saw 100 trucks with people packed densely aboard); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 1'44 (Q: Were there a lot of trucks passing by? … A: […] there were loads of them).

[2123] *Id*. *See also*, T. 2 May 2013 (LIM Sat), p. 31 (2,000 LON Nol soldiers).

LIM Sat's testimony that 10 to 15 trucks were used accords with that of SUM Alat and a civil party applicant,[2124] the Chamber is satisfied that a minimum of 10 trucks, each bearing at least 25 people,[2125] transported those attending the meetings to Tuol Po Chrey.

677. The divergent testimony as to whether those transferred were military or civilians, or wore military or civilian clothing[2126] does not undermine the reliability of the witnesses' accounts as to the transfers themselves. The Chamber is satisfied that both civilians and soldiers attended the town-hall meeting and that those subsequently transferred from the town-hall to Tuol Po Chrey also comprised both former LON Nol

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[2124] T. 4 July 2013 (SUM Alat), pp. 24-25 (*citing* SUM Alat Interview Record, E3/4637), 26, 28-30 (observed there were 13 to 15 trucks which left fully loaded), 89, 92 (that he had tried to board the seventh or eighth truck but was pushed off and told to wait for the next one); UN Pon Civil Party Application, E3/5344, 22 May 2008, p. 6, ERN (En) 00883880 (a resident of Bakan District, Pursat Province, in early 1975 he saw 12 trucks). The Chamber has had regard to the original Civil Party Application in Khmer which also states there were 12 trucks, and notes that the French translation of the Civil Party Application stating that he saw two trucks, is clearly erroneous: *see* ERN (Fr) 00887730 and ERN (Kh) 00461101.

[2125] Although SUM Alat claimed each truck could carry 50 to 60 people each, other evidence shows 25 to 30 people to be the average number of persons aboard a truck: *see* T. 4 July 2013 (SUM Alat), pp. 24-25 (*citing* SUM Alat Interview Record, E3/4637), 26, 28-30 (observed the trucks left fully loaded, each potentially carrying 50 to 60 people per truck); *cf* T. 2 May 2013 (LIM Sat), pp. 21-22 (*citing* LIM Sat Interview Record, E3/364, estimated that the trucks that carried officials to the town hall meeting were able to accommodate at least 30 people each); UN Pon Civil Party Application, E3/5344, 22 May 2008, p. 6, ERN (En) 00883880 (estimated 25 to 30 soldiers per truck); CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 3, ERN (En) 00288200 (a former LON Nol soldier from Phnom Penh who had been sent to work at Po 2 village in Pursat Province after 17 April 1975, estimated that white military trucks that he saw transporting LON Nol soldiers to Tuol Po Chrey about one month after the liberation of Phnom Penh could fit 30 people per truck); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province who saw the trucks, estimated each truck could hold 40 people).

[2126] T. 3 May 2013 (LIM Sat), pp. 10-11 (there were no civilians aboard the trucks, just soldiers), 12-13 (soldiers wearing their uniforms and bearing logos could be seen on the back of the trucks), 14-15 (he never saw anyone on the trucks wearing civilian clothes); *cf.* T. 4 July 2013 (SUM Alat), pp. 84-85, 90-91 (testified that a minority of people on board wore military uniforms and he himself was in civilian dress). *See also*, CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 3, ERN (En) 00288200 (a former LON Nol soldier from Phnom Penh who had been sent to work at Po 2 village in Pursat Province after 17 April 1975, saw LON Nol soldiers in uniforms and wearing their rank insignias aboard the trucks from Pursat provincial hall to Tuol Po Chrey); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province, saw there was a female medic in uniform, male soldiers in uniform, and some who wore civilian clothes). Evidence further suggests that soldiers wore civilian clothes such that it was hard to distinguish between soldiers and civilians: T. 29 April 2013 (UNG Chhat), pp. 79, 82; T. 30 April 2013 (UNG Chhat), pp. 12-13, 32-33, 59; UNG Chhat Interview Record, E3/4600, 21 August 2009, p. 2, ERN (En) 00373916 (everyone was dressed in civilian, such that there could have been both soldiers and government officials at the hall); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 10'05 (an unidentified male driver of the trucks that conveyed soldiers to Tuol Po Chrey stated they were in civilian clothes).

soldiers, who were unarmed at the time, as well as former civilian officials of the same regime.

12.4. Events at Tuol Po Chrey

678. Although none of the witnesses heard by the Chamber were present at the Tuol Po Chrey site to witness the fate of those transferred, the Chamber heard a significant amount of evidence as to the events that transpired, from which it can safely draw inferences. In particular, three days after the transfers, SUM Alat spoke with two LON Nol soldiers named That and Dor, who had escaped the scene of the execution. They told SUM Alat that all those aboard the trucks were forced off approximately 700 meters to one kilometre away from Tuol Po Chrey after which they were tied up, led over to another group of people and killed.[2127]

679. While Tuol Po Chrey was too far away from where LIM Sat's unit was stationed for him to hear gun-shots personally, he gave evidence that firearms were heard in the background during radio communication from Tuol Po Chrey and he also heard that one person had managed to escape.[2128] Both UNG Chhat and LIM Sat noted that the vehicles that had earlier transported the meeting's participants to Tuol Po Chrey returned to the town-hall empty.[2129] UNG Chhat also heard that villagers who had heard gun-fire had gone to the site and seen corpses with their hands bound.[2130] Up until the date of his testimony, SUM Alat had heard nothing more from or about his friends who were taken there.[2131]

[2127] T. 4 July 2013 (SUM Alat), pp. 34-35, 93-94. *See also*, T. 2 May 2013 (LIM Sat), p. 29 (also heard during radio communication from Tuol Po Chrey that one person managed to escape); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 5, ERN (En) 00287331 (that two people managed to escape).

[2128] T. 2 May 2013 (LIM Sat), pp. 29 (he heard the shots and that one person escaped through the radio), 74 (his colleague who was carrying the radio told him about this).

[2129] T. 29 April 2013 (UNG Chhat), pp. 85-86; T. 30 April 2013 (UNG Chhat), pp. 6, 12; T. 2 May 2013 (LIM Sat), p. 30.

[2130] T. 30 April 2013 (UNG Chhat), pp. 11-13, 18-20, 22-23, 25-27, 84-85. *See also*, SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329 (a farmer living in Pursat Province, he saw the corpses the following day, they were tied together with their hands tied behind their backs and bearing gunshot wounds).

[2131] T. 4 July 2013 (SUM Alat), p. 38. *See also*, TES Bopha Civil Party Application, E3/4811, 6 April 2010, p. 2, ERN (En) 00893346 (a former civil servant who concealed her identity, stated none of the civil servants sent to study and welcome Samdech NORODOM Sihanouk in April 1975 in Pursat Province came back).

680. The Khmer Rouge removed boots, watches and backpacks from those executed at Tuol Po Chrey and returned with these belongings.[2132] The executions at Tuol Po Chrey were carried out by soldiers from the North-west Zone while soldiers from battalions 201 or 202 were tasked with guarding the road.[2133] The executed victims were later either buried at the Tuol Po Chrey site or bulldozed into a pond using equipment sent by the Zone Committee to Tuol Po Chrey.[2134]

681. The only reasonable inference to be drawn from the evidence before the Chamber is that LON Nol officials transported to Tuol Po Chrey around 25 or 26 April 1975 were executed.[2135] Although evidence varies as to the exact number of

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[2132] T. 3 May 2013 (LIM Sat), pp. 13-14.

[2133] T. 2 May 2013 (LIM Sat), pp. 50-51, 74. *See also*, SIEM Soeum Interview Record, E3/5235, 15 January 2009, pp. 3, ERN (En) 00287329 (Khmer Rouge soldiers did not accompany the soldiers there but were at the site ready to kill the soldiers when they arrived), 5, ERN (En) 00287331 (the soldiers who carried out the executions and the drivers who operated the bulldozers "were from far away"); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 8'33 (an unidentified male from the 'Preventive Unit' said soldiers from the Zone and units 18 and 19 were at Tuol Po Chrey). LIM Sat estimated there were 50 to 60 Khmer Rouge at Tuol Po Chrey at that time: T. 2 May 2013 (LIM Sat), p. 27.

[2134] T. 4 July 2013 (SUM Alat), pp. 34, 94; T. 2 May 2013 (LIM Sat), p. 31 (saw the bulldozers return from Tuol Po Chrey); T. 30 April 2013 (UNG Chhat), pp. 19-20, 26-27 (he also saw fragments of bodies, bones, when he later visited the site with investigators); CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 4, ERN (En) 00288201 (a former LON Nol soldier working at Po 2 village in Pursat Province after 17 April 1975, passed by the site and saw traces of excavators that had buried all the corpses); SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 4, ERN (En) 00287330 (the following day two excavators were seen there and describing the pond); DC-Cam Document: *Mapping the Killing Fields of Cambodia, 1997: khet Pursat*, E3/2066, ERN (En) 00078057, 00078060-61. *See also*, Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 7'12 (an unidentified female speaker stated she knew bodies were buried in the pond), 11'43 (an unidentified male speaker described dead bodies by the pond), 13'51-13'57 (an unidentified male speaker stated "they wanted to hide [the bodies] all in the pond. But it wasn't big enough. When the pond was full up they laid the bodies in the field"), 14'32 (an unidentified male speaker stated "all around the pond was covered in corpses"), 18'15 (an unidentified male speaker stated the Khmer Rouge buried the bodies with bulldozers); T. 2 May 2013 (LIM Sat), p. 31 (the bulldozers were sent by the Zone Committee).

[2135] *See also*, OUK Savuth Interview Record, E3/5177, 9 June 2008, p. 5, ERN (En) 00242134 (stating the former LON Nol soldiers and officials were executed by shooting); CHEY Yan Civil Party Application, E3/4857, 14 June 2010, p. 1, ERN (En) 00888492 (a resident of then Bakan District stated those taken to the study session were executed). Other evidence corroborates that LON Nol soldiers were executed at Tuol Po Chrey, although it is not clear to which time period this evidence relates: Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 1'51 (…they were killed), 2'24 (Yong Sok Nheb stated in a few days the bodies were piling up at Tuol Po Chrey), 3'27-3'44, 4'50-5'50 (Po Chean stated he went to Tuol Po Chrey the morning after and saw bodies everywhere; they were tied together with rope and not yet decomposed), 10'55-11'15 (an unidentified male speakers stated after the soldiers descended from the truck their hands were tied and they were led to the killing fields where they were shot one by one).

victims, the Chamber is satisfied that a minimum of 250 former LON Nol officials died in this period.[2136]

12.5. Legal Findings

682. The Closing Order charges the Accused with murder, extermination and political persecution through execution as crimes against humanity for crimes allegedly committed at Tuol Po Chrey.[2137] The Chamber has previously concluded that the *chapeau* requirements of Article 5 of the ECCC Law have been fulfilled.[2138]

683. *Murder*. Those transferred from the town-hall to Tuol Po Chrey comprised both former LON Nol soldiers, who had surrendered and were unarmed at the time of the transfer, and former civilian officials of the same regime. The victims of the executions at Tuol Po Chrey included both civilians and former LON Nol soldiers who had surrendered and were no longer taking an active part in hostilities at the time of being transported to and executed at Tuol Po Chrey. In view of the findings regarding the transportation and execution of former LON Nol officials at Tuol Po

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[2136] *See* Section 12: Tuol Po Chrey, para. 676. Although LIM Sat estimated close to 2,000 LON Nol soldiers were transported to Tuol Po Chrey, his evidence as to the number of trucks and participants at the meeting was often confused: T. 2 May 2013 (LIM Sat), pp. 24, 29-31. SIEM Soeum saw up to 1,000 dead bodies at Tuol Po Chrey in the aftermath of April 1975: SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329. Although SUM Alat testified that SENG Chhorn, the former chief of Svay Luong Commune, Kandieng District, told him that 2,000 victims were killed at Tuol Po Chrey he did not specify whether this was limited to a particular time period: T. 4 July 2013 (SUM Alat), p. 36 (*citing* SUM Alat Interview Record, E3/4637); *cf.* SUY Seng Chhorn Interview Record, E3/4638, 11 June 2008, pp. 4-5, ERN (En) 00242119-20 (a local farmer in Bakan District, Pursat Province, estimated seeing about 3,000 corpses there, and stated there were another 5,000 in the lake).
The 'Killings Fields Mapping Project' carried out by Documentation Center of Cambodia (DC-Cam) in 1997 estimated 10,363 people were killed at Tuol Po Chrey between 1975 and 1978, of which 6,863 victims deemed soldiers, teachers, professors or laymen, including the provincial governor Prum Li Huon. The Mapping Project does not indicate how many of these victims were killed during the aftermath of 17 April 1975 alone: DC-Cam Document: *Mapping the Killing Fields of Cambodia: khet Pursat*, E3/2066, 1997, ERN (En) 00078057, 00078061-62, and DC-Cam Document: *Mapping the Killing Fields of Cambodia: Site Form*, 1997, E3/2066, ERN (En) 00068300. *See also*, Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, Additional Footage: *One Day at Po Chrey*, at 15'09 (an unidentified male from the 'Preventive Unit' stated he asked a member of the "smashing force" how many soldiers must've been killed, and was told "there were nearly 10,000."), 15'35-15'47 (the unidentified male from the 'Preventive Unit' spoke with 'Bol' the recruitment officer in the 'smashing unit' who estimated between 9,000 and 10,000 were killed).

[2137] Closing Order, paras 1373 (murder), 1381 (extermination), 1416 (political persecution). On 19 October 2011, pursuant to severance, the Chamber clarified that paras 698-711 of the Closing Order relating to Tuol Po Chrey, and the offenses charged, fell within the scope of Case 002/01. *See* Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, E124/7.3, 18 October 2011, pp. 1-2.

[2138] *See* Section 4: General Overview: 17 April 1975-6 January 1979, para. 198.

Chrey,[2139] the Chamber finds that the legal requirements of murder are met (namely that the victims under consideration died, and that their deaths were caused by the acts of the Khmer Rouge soldiers from the North-west Zone). Further, in view of the large numbers of LON Nol officials transferred and executed, the repeated transfers to the execution site, and the manner of their execution, the Chamber is satisfied that Khmer Rouge soldiers from the North-west Zone at Tuol Po Chrey intended to kill these victims. Accordingly, the Chamber finds that the death of those LON Nol officials constitutes murder.

684. *Extermination*. The execution of a minimum of 250 LON Nol officials at Tuol Po Chrey approximately one week after 17 April 1975 is of a scale that satisfies the requirements of extermination.[2140] Having regard to the large numbers of LON Nol officials transferred and executed, the repeated transfers to the execution site, and the manner of their execution, the Chamber is satisfied that the Khmer Rouge soldiers from the North-west Zone at Tuol Po Chrey intended to kill on a massive scale and through their acts, committed extermination.

685. *Political persecution*. The acts of murder and extermination carried out at Tuol Po Chrey targeted former LON Nol officials, a clearly discernible group. These acts infringed upon and denied the fundamental right to life enjoyed by these individuals, as enshrined in customary international law.[2141] They were also discriminatory in fact insofar as the victims were former LON Nol officials.

686. The Chamber is further satisfied that the killings were committed with the intent to discriminate against former LON Nol officials on political grounds. This is

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[2139] *See* Section 12: Tuol Po Chrey, para. 681.
[2140] *See* Section 12: Tuol Po Chrey, para. 681.
[2141] As evidence of the state of customary international law, *see* Universal Declaration on Human Rights, G.A. Res. 217A (III), UN GAOR, 3rd Sess., 10 December 1948, Art. 3; 1949 Geneva Conventions I-IV, Art. 3(1)(a), which Cambodia ratified on 8 December 1958; Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature on 4 November 1950, 213 UNTS 221 (entered into force on 3 September 1953), as amended by Protocols Nos 11 and 14, Art. 2; ICCPR, Art. 6. *See also, Kordić and Čerkez* Appeal Judgement, para. 106 (considering that the inherent right to life and to be free from cruel, inhuman or degrading treatment or punishment is recognised in customary international law and is embodied in Articles 6 and 7 of the ICCPR, and Articles 2 and 3 of the ECHR). It is clear in the jurisprudence of the International Tribunals that acts of wilful killing, murder, and of serious bodily and mental harm are of sufficient gravity to the other crimes enumerated in Article 5 of the ECCC Law and therefore may constitute the crime of persecution).

evidenced by the official radio announcements across the country identifying former LON Nol officials as the enemy and the fact that similar acts were committed against LON Nol officials throughout Cambodia after the takeover on 17 April 1975.[2142] It is further supported by the circumstances surrounding the crimes, namely the discriminatory and targeted nature of the orders given by the North-west Zone Committee members Ta Nhim and Ta Kan and the common identity of the group of victims as former members of the LON Nol regime.

687. *Conclusion.* Having found that the *chapeau* requirements of Article 5 are satisfied, the killings of those former LON Nol officials at Tuol Po Chrey constitute the crimes of murder, extermination and persecution on political grounds as crimes against humanity.

[2142] *See* Section 4: General Overview: 17 April 1975-6 January 1979, para. 172; Section 6: Communication Structure, paras 254-260.

13. APPLICABLE LAW: INDIVIDUAL CRIMINAL RESPONSIBILITY

13.1. Introduction

688. Article 29 (new) of the ECCC Law outlines the applicable forms of individual criminal responsibility: commission, planning, instigating,[2143] ordering, aiding and abetting,[2144] and superior responsibility. The Closing Order alleges that the Accused committed, through their acts and omissions (and through a joint criminal enterprise), planned, instigated, ordered, aided and abetted the charged crimes. Alternatively, the Closing Order charges the Accused with superior responsibility for the charged crimes.[2145] The Chamber may choose the form or forms charged in the Closing Order that describe the responsibility of the Accused most accurately. It is not obliged to make exhaustive factual findings on every charge.[2146] Where an accused is found to be both directly responsible and responsible as a superior in relation to the same conduct, the Chamber will convict on the basis of the former and consider an accused's superior position as an aggravating factor in sentencing.[2147]

689. The Chamber must determine whether each mode of liability satisfies the principle of legality, namely that it existed in customary international or Cambodian law between 1975 and 1979, and that it was sufficiently foreseeable and accessible to the Accused.[2148]

13.2. Commission through a Joint Criminal Enterprise

690. Participation in a joint criminal enterprise ("JCE") amounts to commission

[2143] On the discrepancy between the Khmer, English and French versions of the ECCC Law concerning the notions of instigation and incitement, *see* Section 13: Applicable Law: Individual Criminal Responsibility, para. 699, fn. 2179.
[2144] On the discrepancy between the Khmer, English and French versions of the ECCC Law concerning the notions of aiding and abetting and "complicité" *see* Section 13: Applicable Law: Individual Criminal Responsibility, para. 703, fn. 2194.
[2145] Closing Order, para. 1613; Section 1: Introduction, para. 11.
[2146] Internal Rule 98(2); *KAING Guek Eav* Trial Judgement, para. 472.
[2147] *KAING Guek Eav* Trial Judgement, para. 539; *Blaškić* Appeal Judgement, para. 91.
[2148] Section 2: Preliminary Issues, paras 16-20.

within the scope of Article 29 (new) of the ECCC law.[2149] The ICTY Appeals Chamber has held that JCE comprises three categories:

- The basic category ("JCE I"), where all participants act pursuant to a common purpose and share the same criminal intent;[2150]
- The systemic category ("JCE II"), referring to instances of ill-treatment in organised institutions, such as concentration camps;[2151] and
- The extended category ("JCE III"), where participants have agreed on a common purpose involving the perpetration of crime(s) and are liable for criminal acts which, while outside the common purpose, are nevertheless a natural and foreseeable consequence of effecting that common purpose.[2152]

691. The Pre-Trial and Trial Chambers have held that JCE III did not exist in customary international or Cambodian law by 1975,[2153] and it will accordingly not be considered further. On 2 September 2011, the Trial Chamber re-affirmed that JCE I and JCE II were forms of criminal liability recognised in customary international law between 1975 and 1979.[2154] Considering the senior positions of the Accused and the customary nature of JCE I and JCE II by 1975, the Chamber finds that this mode of liability was foreseeable and accessible to the Accused.[2155]

692. All categories of JCE have three objective elements. First, there must be a plurality of persons. While it is necessary to identify the plurality of persons participating in the JCE, it is not necessary to identify by name each person

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[2149] Decision on Appeals against the Co-Investigating Judges' Order on Joint Criminal Enterprise (PTC), D97/15/9, 20 May 2010, para. 49; *KAING Guek Eav* Trial Judgement, para. 511.
[2150] *Tadić* Appeal Judgement, paras 196-201.
[2151] *Tadić* Appeal Judgement, paras 202-203.
[2152] *Tadić* Appeal Judgement, para. 204.
[2153] Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, paras 31, 35, 38; Decision on Appeals against the Co-Investigating Judges' Order on Joint Criminal Enterprise (PTC), D97/15/9, 20 May 2010, paras 77, 83, 87-88.
[2154] Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 22; *see also*, Decision on Appeals against the Co-Investigating Judges' Order on Joint Criminal Enterprise (PTC), D97/15/9, 20 May 2010, paras 57-69, 72; *KAING Guek Eav* Trial Judgement, para. 512; *Tadić* Appeal Judgement, paras 220, 226. The Chamber notes that the IENG Sary Defence repeats previous arguments before the Pre-Trial and Trial Chambers that JCE I and II did not exist in customary international law by 1975 and alleges no new facts or circumstances arising since decisions were made on these prior submissions (Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, E163/5/10.2, 18 January 2013, paras 32-33). This request for reconsideration is therefore inadmissible.
[2155] Decision on Appeals against the Co-Investigating Judges' Order on Joint Criminal Enterprise (PTC), D97/15/9, 20 May 2010, paras 69, 72; *see also*, Section 7: Roles and Functions – Nuon Chea, paras 319-323; Section 8: Roles and Functions – Khieu Samphan, paras 376-407 (on the senior positions of the Accused).

involved.[2156] Second, there must be a common purpose which amounts to or involves the commission of a crime.[2157] Third, an accused must participate in the common purpose, making a significant, but not necessarily indispensable, contribution.[2158]

693. Participation in a common purpose may be by positive act or culpable omission.[2159] The significance of a contribution to the JCE is to be determined on a case-by-case basis, taking into account a variety of factors including the position of the Accused, the level and efficiency of the participation, and any efforts to prevent crimes.[2160] An accused's participation in a common purpose need not involve commission of a specific crime provided for in the Agreement or ECCC Law (for example murder, extermination or torture), but may take the form of assistance in, or contribution to, the execution of the common purpose.[2161] Participants in a JCE can incur liability for crimes committed by direct perpetrators who were not JCE members, provided that it has been established that the crimes can be imputed to at least one JCE participant and that this participant, when using a direct perpetrator, acted to further the common purpose.[2162]

694. With respect to the *mens rea* for JCE I, an accused must intend to participate in the common purpose and this intent must be shared with the other JCE participants.[2163] For JCE II, an accused must have knowledge of the criminal nature of a system of ill-treatment and intend to further the common system of ill-treatment.[2164] Participants in either of these forms of JCE must be shown to share the required intent of the direct perpetrators, including the specific intent for the crime where required, as with persecution.[2165] "[T]he significance and scope of the material participation of an

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[2156] *KAING Guek Eav* Trial Judgement, para. 508; *Krajišnik* Appeal Judgement, para. 156.
[2157] *KAING Guek Eav* Trial Judgement, para. 508; *Tadić* Appeal Judgement, para. 227.
[2158] *KAING Guek Eav* Trial Judgement, para. 508; *Brđanin* Appeal Judgement, para. 430.
[2159] *Kvočka et al.* Appeal Judgement, paras 187, 421, 556. As a matter of general principle, the ICTY and ICTR Appeals Chambers have consistently held that a crime may be committed by culpable omission where there is a duty to act, and that an accused may be held directly responsible for contributing to a crime by omission where an accused had a duty to act (*see e.g. Blaškić* Appeal Judgement, para. 663; *Galić* Appeal Judgement, paras 168, 175; *Ntagerura et al.* Appeal Judgement, para. 334).
[2160] *Kvočka et al.* Trial Judgement, para. 311.
[2161] *Vasiljević* Appeal Judgement, para. 100.
[2162] *Krajišnik* Appeal Judgement, para. 225.
[2163] *KAING Guek Eav* Trial Judgement, para. 509; *Kvočka et al.* Appeal Judgement, paras 82, 118.
[2164] *KAING Guek Eav* Trial Judgement, para. 509; *Vasiljević* Appeal Judgement, para. 101.
[2165] Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 16; *Kvočka et al.* Appeal Judgement, para. 110.

individual in a JCE may [also] be relevant in determining whether that individual had the requisite *mens rea*".[2166]

695. The KHIEU Samphan Defence submits that an Accused can be found to have participated in a specific common purpose with criminal intent only when this purpose is intrinsically criminal. It submits that the Closing Order alleges a lawful objective, "a socialist political revolution in Cambodia", and that only after the founding of Democratic Kampuchea were criminal policies implemented. Thus the Defence argues that criminal intent cannot be inferred from mere participation in the regime.[2167] Similarly, the NUON Chea Defence submits that the criminal conduct must be inseparable from the common purpose.[2168]

696. These submissions are largely repetitive of preliminary objections made by the IENG Sary Defence.[2169] The Chamber dismissed these objections on 12 September 2011, finding that a common purpose must either have a crime as its objective or contemplate the commission of crimes as the means of achieving an objective.[2170] In the instant case, although the Co-Investigating Judges acknowledged that the common purpose was "not entirely criminal", they clarified that its implementation involved the commission of crimes.[2171] The Co-Investigating Judges also alleged that the Accused's acts and omissions show that they shared the intent that the crimes be committed through a common purpose resulting in, or involving, the commission of crimes.[2172] Accordingly, the Accused fail to demonstrate any error.

13.3. Planning

697. By 1975, planning was a form of individual criminal responsibility recognised

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[2166] *Kvočka et al.* Appeal Judgement, paras 97, 188.
[2167] [KHIEU Samphan's] Submissions regarding the Applicable Law, E163/5/9, 18 January 2013, paras 33-57; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 311-313.
[2168] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, paras 36-37.
[2169] IENG Sary's Motion to Strike Portions of the Closing Order due to Defects, E58, 24 February 2011, paras 3-6; Summary of IENG Sary's Rule 89 Preliminary Objections, E51/4, 25 February 2011, para. 24(d).
[2170] Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 17.
[2171] Closing Order, para. 1524. The subsequent paragraph indicates a number of criminal activities that "resulted in" or "were committed by members and non-members of the JCE" (Closing Order, para. 1525).
[2172] Closing Order, paras 1521, 1533, 1537.

in customary international law.[2173] Considering the senior positions held by the Accused, and that planning was recognised as a mode of liability in both customary international and Cambodian law by 1975, the Chamber finds that this mode of liability was foreseeable and accessible to the Accused.[2174]

698. To be held responsible for planning, an accused, alone or with others, must design criminal conduct constituting or involving a crime later perpetrated.[2175] The plan must precede and substantially contribute to the criminal conduct.[2176] An accused must intend, or be aware of a substantial likelihood of, the commission of a crime upon the execution of the plan.[2177]

13.4. Instigating

699. Instigating was also recognised as a form of individual criminal responsibility in customary international law by 1975.[2178] While the Khmer and French versions of Article 29 of the ECCC Law refer to incitement ("*inciter*"), the notions of instigation and incitement are considered synonymous.[2179] Considering the senior positions held by the Accused and that instigating was recognised as a mode of liability in both customary international and Cambodian law by 1975, the Chamber finds that it was

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[2173] *KAING Guek Eav* Trial Judgement, paras 475, 478. Prior to 1975, various international instruments codified planning liability (Tokyo Charter, Article 5; Nuremberg Charter, Article 6; Control Council Law No. 10, Article II(2)(d); Nuremberg Principles, Principle VI; Hostage Convention, Article 4(a)). Nuremberg-era courts entered convictions against accused found to have planned international crimes, including crimes against humanity (*see e.g. Nuremberg* Judgement, pp. 279-282, 285-288, 294-296, 305-307, 316 322-325, 339-341; *Ministries* Judgement, p. 401).

[2174] *KAING Guek Eav* Trial Judgement, para. 474; *see also*, Section 2: Preliminary Issues, paras 16, 19, 20. Planning was criminalised by Articles 223, 239 and 290 of the 1956 Penal Code.

[2175] *KAING Guek Eav* Trial Judgement, para. 518; *Kordić and Čerkez* Appeal Judgement, para. 26.

[2176] *KAING Guek Eav* Trial Judgement, para. 518; *Kordić and Čerkez* Appeal Judgement, para. 26; *Nahimana et al.* Appeal Judgement, fn. 2116.

[2177] *KAING Guek Eav* Trial Judgement, para. 519; *Kordić and Čerkez* Appeal Judgement, para. 31.

[2178] *KAING Guek Eav* Trial Judgement, para. 475. Instigation and incitement were codified in various international instruments prior to 1975 (Nuremberg Charter, Article 6; Genocide Convention, Article 3; Supplementary Slavery Convention, Article 6; ICCPR, Article 20; Discrimination Convention, Article 4; Statutory Limitations Convention, Article II; Apartheid Convention, Article III(a); Hostage Convention, Article 4(a)). Nuremberg-era courts entered convictions against accused who incited and instigated crimes against humanity (*Nuremberg* Judgement, pp. 302-304; *Ministries* Judgement, pp. 565-576).

[2179] *Akayesu* Appeal Judgement, para. 478.

foreseeable and accessible to the Accused.[2180]

700. To be held responsible for instigating, an accused must, through act or omission, prompt another to commit a crime.[2181] Liability may ensue through implicit written or other non-verbal prompting.[2182] Instigating does not require that an accused have authority over the perpetrator.[2183] The act or omission must precede and substantially contribute to, not merely facilitate, the criminal conduct.[2184] An accused must intend, or be aware of a substantial likelihood of, the commission of a crime as a result of the instigation.[2185]

13.5. Ordering

701. By 1975, customary international law recognised ordering as a form of individual criminal responsibility.[2186] Considering the senior positions held by the Accused and that ordering was recognised as a mode of liability in both customary international and Cambodian law by 1975, the Chamber finds that it was foreseeable and accessible to the Accused.[2187]

702. Ordering requires that an accused, in a position of authority *de facto* (in fact) or *de jure* (in law), instruct another person to commit a crime. No formal superior-

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[2180] *KAING Guek Eav* Trial Judgement, para. 474; *see also*, Section 7: Roles and Functions – Nuon Chea, paras 319-323; Section 8: Roles and Functions – Khieu Samphan, paras 376-407 (on the senior positions of the Accused). Instigating was criminalised by Articles 83 and 84 of the 1956 Penal Code.

[2181] *KAING Guek Eav* Trial Judgement, para. 522; *Ministries* Judgement, p. 576; *Kordić and Čerkez* Appeal Judgement, para. 27.

[2182] *KAING Guek Eav* Trial Judgement, para. 522; *Orić* Trial Judgement, para. 271-273.

[2183] *KAING Guek Eav* Trial Judgement, para. 522; *Orić* Trial Judgement, para. 271-273.

[2184] *KAING Guek Eav* Trial Judgement, para. 522; *Nuremberg* Judgement, pp. 336-338 (acquitting a defendant, in part, on the basis that the incitement was not sufficiently direct or unequivocal); *Kordić and Čerkez* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, fn. 2116.

[2185] *KAING Guek Eav* Trial Judgement, para. 524; *Nuremberg* Judgement, pp. 303 (noting that the accused received current information of the progress of the final solution and "continued to write and publish his propaganda of death"), 338; *Kordić and Čerkez* Appeal Judgement, para. 32.

[2186] *KAING Guek Eav* Trial Judgement, para. 475. Prior to 1975, ordering was codified in international instruments (Geneva Convention (IV), Article 49; Control Council Law No. 10, Article II(2)(b)). Nuremberg-era courts entered convictions against accused for ordering war crimes and crimes against humanity (*Nuremberg* Judgement, pp. 289-291, 311-315; *High Command* Judgement, pp. 560-561, 665, 693; *RuSHA* Judgement, p. 106; *Justice* Judgement, p. 1119).

[2187] *KAING Guek Eav* Trial Judgement, para. 474; *see also*, Section 7: Roles and Functions – Nuon Chea, paras 319-323; Section 8: Roles and Functions – Khieu Samphan, paras 376-407 (on the senior positions of the Accused). Ordering was criminalised by Articles 83 and 85 of the 1956 Penal Code.

subordinate relationship between the two is required.[2188] Responsibility may ensue where an accused issues, passes down or otherwise transmits an order, including through intermediaries.[2189] There is no requirement that an order be given in any particular form and the existence of an order may be proven through circumstantial evidence.[2190] The order must precede and substantially contribute to the commission of a crime.[2191] An accused must intend, or be aware of the substantial likelihood, that the execution of the order will result in the commission of a crime.[2192]

13.6. Aiding and Abetting

703. Customary international law recognised aiding and abetting as forms of individual criminal responsibility by 1975.[2193] The Chamber notes that the French version of Article 29 (new) of the ECCC Law equates "aiding and abetting" with the notion of "*complicité*". While the two share some common features, the Chamber has already determined that the phrase "*aidé et encouragé*" more clearly reflects the nature of aiding and abetting liability in customary international law and accords with the English and Khmer versions of the ECCC Law.[2194] Considering the senior positions of the Accused and that aiding and abetting were recognised as modes of liability in both customary international and Cambodian law by 1975, the Chamber finds that aiding and abetting liability was foreseeable and accessible to the

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[2188] *KAING Guek Eav* Trial Judgement, para. 527; *RuSHA* Judgement, p. 106; *Einsatzgruppen* Judgement, pp. 487-488; *Kordić and Čerkez* Appeal Judgement, para. 28.

[2189] *KAING Guek Eav* Trial Judgement, para. 527; *High Command* Judgement, pp. 616-617 (those transmitting orders may be responsible if the order is criminal on its face or may be applied in a criminal manner and the order is not transmitted subject to the necessary clarification or safeguard).

[2190] *KAING Guek Eav* Trial Judgement, para. 527; *Kamuhanda* Appeal Judgement, para. 76.

[2191] *KAING Guek Eav* Trial Judgement, para. 527; *High Command* Judgement, p. 683 (considering that officers drafting orders based upon the overall directives and ideas of the commander may be responsible if they demonstrate some initiative, as opposed to "merely transcrib[ing]").

[2192] *KAING Guek Eav* Trial Judgement, para. 528; *High Command* Judgement, p. 511; *Blaškić* Appeal Judgement, paras 41-42.

[2193] *KAING Guek Eav* Trial Judgement, para. 475. Accomplice liability, including aiding and abetting, was recognised as a principle of international law and codified in various international instruments prior 1975 (Nuremberg Charter, Article 6; Control Council Law No. 10, Article II(2)(b); Nuremberg Principles, Principle VII; Supplementary Slavery Convention, Articles 3, 5-6; Statutory Limitations Convention, Article II; Apartheid Convention, Article III(b); Hostage Convention, Articles 1(2)(b), 4(a); Protected Persons Convention, Article 2(1)(e)). Nuremberg-era courts entered convictions for aiding and abetting war crimes and crimes against humanity (*see e.g. Justice* Judgement, p. 1118; *Pohl* Judgement, pp. 1031, 1039; *Ministries* Judgement, pp. 645-646).

[2194] *KAING Guek Eav* Trial Judgement, para. 532.

Accused.[2195]

704. An aider or abettor must provide practical assistance, encouragement or moral support which has a substantial effect on the commission of a crime that is in fact committed.[2196] No evidence of a plan or agreement between the aider or abettor and the perpetrator is required.[2197] To be found guilty for aiding and abetting, an accused must know that a crime would likely be committed and that his conduct assists or facilitates the commission of a crime.[2198] Further, an accused must be aware of the essential elements of the crime committed by the perpetrator, but need not share the perpetrator's intent to commit the crime, including the specific intent to commit crimes such as persecution.[2199]

705. The KHIEU Samphan Defence raises three issues relating to the *actus reus* of aiding and abetting: (1) whether an accused may aid or abet by omission; (2) whether an accused's conduct must be specifically directed to facilitate the commission of a crime by the main perpetrator; and (3) whether liability may arise from assistance after the commission of a crime.

13.6.1. ***Aiding and Abetting by Omission***

706. The KHIEU Samphan Defence submits that aiding and abetting requires an affirmative act. It argues that the application of disputed ICTY jurisprudence finding that aiding and abetting may be by omission would violate the principle of legality.[2200] The Chamber notes that, contrary to this submission, Nuremberg-era jurisprudence

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[2195] *KAING Guek Eav* Trial Judgement, para. 474; *see also*, Section 7: Roles and Functions – Nuon Chea, paras 319-323; Section 8: Roles and Functions – Khieu Samphan, paras 376-407 (on the senior positions of the Accused). Aiding and abetting was criminalised by Articles 83 and 87 of the 1956 Penal Code.

[2196] *KAING Guek Eav* Trial Judgement, paras 528, 533; *Flick* Judgement, p. 1217 ("One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes"); *Justice* Judgement, p. 1118; *Schonfeld* Trial, pp. 64, 70 (giving "additional confidence to his companions"); *Blaškić* Appeal Judgement, paras 45-46, 48.

[2197] *KAING Guek Eav* Trial Judgement, para. 534;*Tadić* Appeal Judgement, para. 229.

[2198] *KAING Guek Eav* Trial Judgement, paras 534-535; *Einsatzgruppen* Judgement, p. 569 ("in locating, evaluating and turning over lists of Communist party functionaries to the executive of his organisation he was aware that the people listed would be executed when found"); *Blaškić* Appeal Judgement, paras 45-50.

[2199] *KAING Guek Eav* Trial Judgement, para. 535;*Blagojević and Jokić* Appeal Judgement, para. 127.

[2200] [KHIEU Samphan's] Submissions regarding the Applicable Law, E163/5/9, 18 January 2013, paras 59-61; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, para. 321.

recognised that an accused may be held criminally liable for an omission which aids and abets the commission of a crime.[2201] Whether an omission aids or abets a crime is a matter to be determined on a case-by-case basis.[2202] This determination will likely turn on the position and authority of an accused.[2203] This submission is dismissed accordingly.

13.6.2. ***Specific Direction***

707. The KHIEU Samphan Defence submits that a conviction for aiding and abetting may be entered only if the aid or support of an accused is "specifically directed" to facilitate the commission of a crime (commonly referred to as "specific direction").[2204] It bases this submission, which contradicts the practice of the ECCC,[2205] solely on the *Perišić* Appeal Judgement. While this Chamber is not bound by the jurisprudence of the ICTY Appeals Chamber, it may rely, and has in the past relied, upon the jurisprudence of other international courts in determining the contours of criminal elements.[2206]

708. On 28 February 2013, the *Perišić* Appeals Chamber, by majority, held that the *actus reus* of aiding and abetting requires proof of specific direction.[2207] The majority further held that, in view of the fact that "specific direction establishes a culpable link between assistance provided by an accused and the crimes of principal perpetrators", consideration of specific direction must be explicit where the actions of an accused are geographically or temporally remote from a crime scene.[2208] The *Perišić* Appeals Chamber commenced its consideration of the issue with the *Tadić* Appeal Judgement of 15 July 1999, which stated that "[t]he aider and abettor carries out acts *specifically*

[2201] *See e.g. Einsatzgruppen* Judgement, p. 572; *Essen Lynching* Trial, p. 90; *see also, Brđanin* Appeal Judgement, para. 277.
[2202] *Taylor* Appeal Judgement, para. 475; *Blaškić* Appeal Judgement, para. 47.
[2203] *Einsatzgruppen* Judgement, pp. 572 (omissions of a person in a high position of authority may encourage an accused to commit a crime), 585 (acquitting an accused considering his low position and that he was not "in a position to protest"); *Essen Lynching* Trial, p. 90; *Orić* Appeal Judgement, para. 42.
[2204] [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 321-323.
[2205] No ECCC Judge or Chamber has required specific direction (Closing Order, para. 1550; *KAING Guek Eav* Trial Judgement, para. 533; *KAING Guek Eav* Closing Order, para. 161).
[2206] Section 2: Preliminary Issues, para. 16.
[2207] *Perišić* Appeal Judgement, para. 36.
[2208] *Perišić* Appeal Judgement, paras 37-40. Conversely, the Appeals Chamber majority clarified that where an accused is present at a crime scene, specific direction may be implicit through discussion of other elements such as substantial contribution.

directed to assist, encourage or lend moral support to the perpetration of a certain specific crime … and this support has a substantial effect upon the perpetration of the crime."[2209] It then reviewed the *ad hoc* Tribunals' appellate jurisprudence on the subject, including the *Mrkšić and Šljivančanin* Appeal Judgement's statement that "the Appeals Chamber has confirmed that 'specific direction' is not an essential ingredient of the *actus reus* of aiding and abetting".[2210] Overall, this review led the *Perišić* Appeals Chamber majority to conclude that no judgement of the Appeals Chamber had to date found cogent reasons to depart from the definition of aiding and abetting liability adopted in the *Tadić* Appeal Judgement, which required proof of specific direction.

709. Following both the *Perišić* Appeal Judgement and the KHIEU Samphan Defence closing arguments in the present case, the ICTY Appeals Chamber issued the *Šainović* Appeal Judgement in which it unequivocally rejected the approach adopted in *Perišić* and confirmed that the prevailing law holds that "'specific direction' is not an essential ingredient of the *actus reus* of aiding and abetting".[2211] Finding that it was faced with earlier decisions of the ICTY Appeals Chamber that conflicted with the *Perišić* Appeals Judgement,[2212] the *Šainović* Appeals Chamber considered itself required to determine the correct approach.[2213] To this end it engaged in an extensive analysis of the jurisprudence of the *ad hoc* Tribunals and customary international law. The *Šainović* Appeals Chamber's analysis contains an in-depth review of post-World War II jurisprudence which is of particular relevance to the ECCC context, where it is necessary to determine whether specific direction formed part of aiding and abetting as it existed under customary international law between 1975 and 1979.[2214] The *Šainović* Appeal Judgement sets out, *inter alia*, case law from British military courts, French military tribunals, trials conducted under the terms of Control Council Law

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[2209] *Tadić* Appeal Judgement, para. 229 (emphasis added).
[2210] *Perišić* Appeal Judgement, paras 27-36, *referring to Mrkšić and Šljivančanin* Appeal Judgement, para. 159.
[2211] *Šainović et al.* Appeal Judgement, para. 1650.
[2212] *Mrkšić and Šljivančanin* and *Lukić and Lukić* Appeals Judgements.
[2213] *Šainović et al.* Appeal Judgement, para. 1622.
[2214] The *Šainović* Appeal Judgement also contains an extensive review of national laws on aiding and abetting. While this review is predominantly focused on laws concluded subsequent to the period over which the ECCC has jurisdiction, the Trial Chamber considers it worth noting the Appeals Chamber's conclusion that "no clear common principle" "can be gleaned from the major legal systems of the world" and that requiring specific direction for aiding and abetting liability is not a general, uniform practice in national jurisdictions (*See* paras 1644, 1646).

No. 10, and the *Nuremberg* Judgement.[2215] Based on its review, the Appeals Chamber came to the "compelling conclusion" that specific direction is not an element of aiding and abetting liability under customary international law and that the *actus reus* instead consists of "practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime".[2216]

710. The SCSL's *Taylor* Appeal Judgement, also rendered subsequent to the *Perišić* Appeal Judgement, similarly engaged in a convincing review of international jurisprudence and instruments, including those concluded before 1975,[2217] and determined that "the essential question is whether the acts and conduct of an accused can be said to have had a substantial effect on the commission of the crime charged".[2218] Based on the comprehensive surveys of jurisprudence and instruments contained in the *Šainović* and *Taylor* Appeal Judgements, this Chamber finds this position to be persuasive and an accurate reflection of the law as at 1975. The Chamber therefore finds no cogent reason to depart from its previous definition of aiding and abetting, and accordingly rejects the Defence's submission with respect to specific direction.

13.6.3. ***Assistance after the Fact***

711. Finally, the KHIEU Samphan Defence submits that no causal link can exist between a crime and assistance provided after the commission of that crime. Thus it submits that one who assists after the fact cannot be liable for aiding and abetting a crime.[2219]

712. The ICTY Appeals Chamber has expressly held "that the *actus reus* of aiding and abetting a crime may occur before, during or *after* the principal crime has been perpetrated".[2220] The Trial Chamber considers that the ICTY approach reflects an understanding that an offer made before or during the commission of a crime, of assistance to be provided after the fact, may encourage or morally support the

[2215] *Šainović et al.* Appeal Judgement, paras 1627-1642.
[2216] *Šainović et al.*Appeal Judgement, para. 1649.
[2217] *Taylor* Appeal Judgement, paras 368-385.
[2218] *Taylor* Appeal Judgement, para. 368.
[2219] [KHIEU Samphan's] Submissions regarding the Applicable Law, E163/5/9, 18 January 2013, paras 62-65.
[2220] *Blaškić* Appeal Judgement, para. 48 (emphasis added).

perpetrator and thereby have a substantial effect on the commission of a crime.[2221] This approach also appears to have been favoured in certain post-World War II jurisprudence.[2222]

713. This Chamber finds that the overarching requirement is that assistance, encouragement or moral support must have a substantial effect on the commission of a crime.[2223] Therefore, in the absence of any form of prior assistance, encouragement or moral support, assistance provided exclusively after the time of perpetration cannot satisfy such requirement. It is only when a substantial effect occurs that the necessary causal link exists.[2224] The Chamber need not identify in the abstract all conduct that may have a substantial effect on the commission of a crime. Rather, this is a matter of evidence to be assessed on a case-by-case basis.[2225]

13.7. Superior Responsibility

714. Superior responsibility, applicable to both military and civilian superiors, was recognised in customary international law by 1975.[2226] Considering the senior positions of the Accused and the fact that superior responsibility was recognised in customary international law by 1975, the Chamber considers that this mode of liability was accessible and foreseeable to the Accused.[2227]

715. For a superior to be held responsible for the criminal conduct of his

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[2221] *Furundžija* Trial Judgement, para. 230; *Aleksovski* Trial Judgement, para. 62; *see also, Brđanin* Appeal Judgement, para. 277 ("encouragement and moral support can only form a substantial contribution to a crime when the principal perpetrators are aware of it"). The Chamber notes that the *Blagojević* Trial Chamber "required for *ex post facto* aiding and abetting that at the time of the planning, preparation or execution of the crime, a prior agreement exist[ed] between the principal and the [aider and abettor]" (*Blagojević and Jokić* Trial Judgement, para. 731). This approach has to date not been endorsed by the ICTY Appeals Chamber.

[2222] *Schonfeld* Trial, p. 70; *Rohde* Trial, p. 56.

[2223] *See* Section 13: Applicable Law: Individual Criminal Responsibility, para. 704.

[2224] *See* Section 13: Applicable Law: Individual Criminal Responsibility, para. 708-710.

[2225] *Taylor* Appeal Judgement, para. 475; *Blagojević and Jokić* Appeal Judgment, para. 134.

[2226] *KAING Guek Eav* Trial Judgement, paras 476-477; Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order (PTC), D427/2/15, 15 February 2011, paras 190-232; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, paras 413-460; *see also, Hadžihasanović and Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), para. 29.

[2227] Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order (PTC), D427/2/15, 15 February 2011, para. 232; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, para. 460; *see also*, Section 7: Roles and Functions – Nuon Chea, paras 319-323; Section 8: Roles and Functions – Khieu Samphan, paras 376-407 (on the senior positions of the Accused).

subordinates, there must first be a superior-subordinate relationship between an accused and the person who committed the crime. The superior must have exercised effective control over the perpetrator, in the sense of possessing the material ability to prevent or punish the crimes.[2228] Second, the superior must have known, or have had reason to know, that a crime was about to be or had been committed by his subordinate.[2229] The superior must have knowledge that his subordinate committed a crime and not simply knowledge of the occurrence of a crime.[2230] A superior has reason to know that a crime has been, or was about to be, committed where he possessed information sufficiently alarming to justify further enquiry.[2231]

716. Finally, a superior must have failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator.[2232] Necessary measures are those appropriate for a superior to discharge his obligation, showing a genuine effort to prevent or punish. Reasonable measures are those reasonably falling within the material power of a superior. Necessary and reasonable measures must be considered on a case-by-case basis.[2233] The failure to prevent and the failure to punish arise at different points in time: a superior's responsibility to prevent a crime arises prior to its commission, while the responsibility to punish a perpetrator arises after the commission of a crime.[2234] The Chamber therefore dismisses the KHIEU Samphan Defence's submission that the *actus reus* of superior responsibility must precede a

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[2228] ECCC Law, Article 29 (new); *KAING Guek Eav* Trial Judgement, paras 540-542; ECCC Law, Article 29; *Delalić et al.* Appeal Judgement, paras 191-192, 198, 206, 252.

[2229] ECCC Law, Article 29 (new); *KAING Guek Eav* Trial Judgement, paras 543-544; *see also*, *RuSHA* Judgement, p. 106; *High Command* Judgement, p. 545; *Hostage* Judgement, pp. 1230, 1271 (a superior "may require adequate reports of all occurrences that come within the scope of his power ... If he fails to require and obtain complete information, the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defence"), 1281 ("He cannot close his eyes to what is going on around him and claim immunity from punishment because he did not know that which he is obliged to know"); *Toyoda* Judgement, p. 5006 (a superior may be responsible if "knew or should have known by use of reasonable diligence"); *Delalić et al.* Appeal Judgement, paras 228- 241.

[2230] *KAING Guek Eav* Trial Judgement, para. 543; *Orić* Appeal Judgement, paras 57-59.

[2231] *KAING Guek Eav* Trial Judgement, para. 544; *Hadžihasanović and Kubura* Appeal Judgement, para. 28.

[2232] ECCC Law, Article 29 (new); *KAING Guek Eav* Trial Judgement, paras 545-547; *Einsatzgruppen* Judgement, pp. 485-486.

[2233] *KAING Guek Eav* Trial Judgement, para. 545; *Halilović* Appeal Judgement, para. 63.

[2234] *KAING Guek Eav* Trial Judgement, para. 546; *Hadžihasanović and Kubura* Appeal Judgement, paras 40 (a causal link between the failure to punish and the crime is not required), 259-260.

crime.[2235]

717. The NUON Chea Defence raises three issues relating to superior responsibility: (1) the status of superior responsibility in customary international law by 1975; (2) whether a superior must have a pre-existing duty to act established in domestic law at the relevant time; and (3) whether a superior is only responsible for the conduct of direct subordinates.

13.7.1. *Superior Responsibility in Customary International Law*

718. The NUON Chea Defence maintains that superior responsibility was not customary international law by 1975. In support of this submission, it largely adopts by reference arguments made by the IENG Sary Defence and IENG Thirith Defence on appeal against the Closing Order.[2236] The Pre-Trial Chamber has already addressed and dismissed these submissions. After reviewing Nuremberg-era jurisprudence, the Pre-Trial Chamber found that the doctrine of superior of responsibility, applicable to both military and civilian superiors, existed in customary international law between 1975 and 1979.[2237] The Trial Chamber adopts this reasoning and will therefore not revisit these submissions here.

719. The NUON Chea Defence further submits that the lack of clarity in the definition of superior responsibility is evidenced by the treatment of the relevant *mens rea* standards in American jurisprudence, namely between *Yamashita* and *Medina*.[2238] The Chamber notes that for a rule to be established in customary international law, the corresponding practice need not "be in absolute rigorous conformity with the

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[2235] [KHIEU Samphan's] Submissions regarding the Applicable Law, E163/5/9, 18 January 2013, paras 66-67; *see also*, Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, E163/5/10.2, 18 January 2013, para. 41.

[2236] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, para. 39 *citing* IENG Sary's Appeal against the Closing Order, D427/1/6, 25 October 2010, paras 283-302 and IENG Thirith Defence Appeal against the Closing Order, D427/2/1, 18 October 2012, paras 81-94; *see also*, Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, E163/5/10.2, 18 January 2013, paras 37-40.

[2237] Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order (PTC), D427/2/15, 15 February 2011, paras 190-232; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, paras 413-460.

[2238] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, para. 40 *citing United States v. Yamashita*, 327 U.S. 1 (1946) ("*Yamashita*") and *United States v. Medina*, CM 427162 (ACMR 1971) ("*Medina*") *as reported in* L. FRIEDMAN, *The Law of War: A Documentary History* (New York, Random House, Vol. II, 1972), p. 1732.

rule".[2239] Accordingly, even if differences of opinion between the United States Supreme Court (*Yamashita*) and a military judge of first instance (*Medina*) were to indicate uncertainty in American jurisprudence concerning the contours of the *mens rea* requirement,[2240] inconsistency between two cases in a single state, without more, does not demonstrate that a mode of liability is not customary international law.[2241] The Defence therefore fails to provide any cogent reason to disturb the findings of the Pre-Trial and Trial Chambers that superior responsibility was established in customary international law by 1975.[2242]

13.7.2. ***Duty to Act***

720. The NUON Chea Defence also submits that both military and civilian superiors must have had a legal obligation to act recognised in Cambodian domestic law at the relevant time.[2243] The Defence further contends that a civilian superior may only be held liable to the extent that his effective control over subordinates is similar to that of military superiors.[2244] The Chamber has already determined that a court may rely on customary international law where the characteristics of an international crime or mode of liability are not provided for in domestic law.[2245] In customary international law, as it existed by 1975, there was no prerequisite that a superior have a duty to act

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[2239] *Nicaragua v. United States*, Judgement, 27 June 1986, ICJ Reports 1986, para. 186; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, paras 458-460 (acknowledging that "the articulation of the contours of fundamental elements of the doctrine was not always clear or complete", the Pre-Trial Chamber nevertheless found that superior responsibility was established in customary international law by 1975).

[2240] The Defence mistakenly asserts that *Medina* was before the United States Court of Military Appeals ([NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, para. 40). However, the jury in *Medina* acquitted the accused on all charges and no appeal was ever heard (Michael Smidt, Yamashita, Medina and Beyond: Command Responsibility in Contemporary Military Operations, *Military Law Review*, Vol. 164 (June 2000), p. 199 (noting that the judge's instructions to the jury in *Medina* have little precedential value)).

[2241] *United Kingdom v. Norway*, Judgement, 18 December 1951, ICJ Reports 1951, p. 138 ("too much importance need not be attached to a few uncertainties or contradictions [in state practice], real or apparent").

[2242] *KAING Guek Eav* Trial Judgement, paras 476-477; Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order (PTC), D427/2/15, 15 February 2011, paras 190-232; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, paras 413-460.

[2243] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, paras 39-45; *see also*, Annex A: IENG Sary's Submission on Applicable Law in Case 002/01, E163/5/10.2, 18 January 2013, para. 41.

[2244] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, para. 46.

[2245] Section 2: Preliminary Issues, para. 18.

recognised in domestic law.[2246] Regardless of whether an accused is a civilian or military superior, the duty to act arises from a superior's effective control over his subordinate and his material ability to prevent or punish a crime.[2247] Whether a superior had effective control is a matter of evidence, not law, and thus must be assessed on a case-by-case basis.[2248]

13.7.3. *Relationships of Subordination*

721. Finally, the NUON Chea Defence contends that a superior may only be held responsible for the conduct of direct subordinates.[2249] On the contrary, Nuremberg-era jurisprudence established that a superior's responsibility is "not limited to a control of units directly under his command".[2250] Thus the Chamber reaffirms its prior finding that "superior responsibility may ensue on the basis of both direct and indirect relationships of subordination".[2251]

[2246] *KAING Guek Eav* Trial Judgement, para. 477; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, para. 459.
[2247] *KAING Guek Eav* Trial Judgement, para. 477; *Pohl* Supplemental Judgement, p. 1176 (the Accused did not have legal authority, but "made room" for himself in the hierarchy); *Delalić et al.* Appeal Judgement, paras 196-197.
[2248] Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, para. 459; *Blaškić* Appeal Judgement, para. 69.
[2249] [NUON Chea's] Preliminary Submissions concerning the Applicable Law, E163/5/11, 18 January 2013, paras 47-49.
[2250] *Hostage* Judgement, p. 1260; *High Command* Judgement, p. 543; *Pohl* Judgement, pp. 1052-1053.
[2251] *KAING Guek Eav* Trial Judgement, para. 542.

14. JOINT CRIMINAL ENTERPRISE

722. According to the Closing Order, the common purpose of the CPK during the DK era (17 April 1975 to 6 January 1979) was to implement rapid socialist revolution through a "great leap forward" and defend the Party against internal and external enemies, by whatever means necessary (Section 14.1).[2252] The Closing Order alleges that various persons shared and participated in this common purpose including members of the Standing Committee, such as NUON Chea and IENG Sary; members of the Central Committee, such as KHIEU Samphan; heads of CPK ministries, including IENG Thirith; Zone and Autonomous Sector secretaries; and heads of the Party Centre military divisions.[2253]

723. As limited in Case 002/01, the Closing Order alleges that JCE participants designed and implemented the following policies, among others, during the DK era:

i. The repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another ("Population Movement Policy"), insofar as this policy is relevant to movement of population (phase one) and movement of population (phase two) (Section 14.2); and

ii. The targeting of former officials of the Khmer Republic, including both civil servants and former military personnel and their families ("Targeting Policy"), insofar as this policy is relevant to executions of former Khmer Republic officials at Tuol Po Chrey (Section 14.3).[2254]

14.1. Common Purpose

724. The Party leadership pursued a common purpose to liberate Cambodia and create a socialist society in four phases: party-building (September 1960 – January 1968) (Section 14.1.1), initiation of the armed revolution (January 1968 – March 1970) (Section 14.1.2), the democratic revolution (March 1970 – April 1975) (Section

[2252] Closing Order, paras 156, 158, 1524, 1528.
[2253] Closing Order, para. 159, 895-901, 975-977, 1153-1162, 1191-1193, 1529, 1532-1533, 1536-1537.
[2254] Closing Order, paras 157-158, 1525, 1528; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3; *see also*, Section 1: Introduction, paras 9-11; Section 3: Historical Background, para. 102.

14.1.3) and the socialist revolution (April 1975 – January 1979) (Section 14.1.4).[2255]

725. Of these, the Chamber has jurisdiction only over the socialist revolution phase, which began with the conclusion of the armed conflict between the Khmer Rouge and the Khmer Republic on 17 April 1975 and continued at least until 6 January 1979. The Chamber has further limited the applicable time period to between 17 April 1975 and December 1977 based on the temporal scope of the crimes forming part of Case 002/01. However, the policies and plans to implement the common purpose during this period originated prior to the temporal jurisdiction of the court. Further, the most significant participants joined the common purpose before 17 April 1975. Therefore, in order to have a clear understanding of the JCE's origin, the Chamber considers it necessary to address the evolution of the various policies and plans, as well as the stage at which various participants were introduced.

14.1.1. *Phase One: Party-Building*

726. Between 1958 and 1960, POL Pot, NUON Chea and others drafted the first Party Statute and began formulating the Party's political line, including the necessity of armed struggle, establishment of a socialist society, "democratic centralism"[2256] and a focus on self-reliance.[2257] At the First Party Congress in September 1960, TOU Samuth (Secretary), NUON Chea (Deputy Secretary), POL Pot, SON Sen, IENG Sary, VORN Vet, SAO Phim and others[2258] adopted a three point programme:

[2255] *See e.g.* POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, pp. 3-4, 6-7, 9, 19, ERN (En) S 00012701-4, S 00012709 (The armed struggle began in 1968 and then from March 1970 until April 1975 it was a united struggle among all factions for national liberation from the American imperialists. From April 1975, it was a period of struggle for national defence in the socialist revolution); Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 2, ERN (En) 00011545 (The Party was founded in 1960 and thereafter the political line readied. From 1968-1970, there was the beginning of the armed civil war and then from March 1970 to April 1975, there was the war to liberate the country from the imperialists. From 1975, it was a period of socialist revolution).

[2256] Section 3: Historical Background, paras 86-88; Section 5: Administrative Structures, paras 223-228.

[2257] Section 3: Historical Background, paras 86-88; Section 7: Roles and Functions – Nuon Chea, para. 325; *see also, Interview with IENG Sary* (The Call), E3/652, 28 August 1978, p. 2, ERN (En) S 00011847 (Kampuchean revolutionaries believed that armed struggle was necessary to do away with feudalism and capitalism and establish a socialist society. Rebuffed by the Soviets when they sought money for a newspaper, they realised that they had to be self-reliant).

[2258] Between 28 and 30 September 1960, the First Party Congress adopted the statute; appointed TOU Samuth as Secretary and NUON Chea as Deputy Secretary; created a Central Committee composed of, amongst others, VORN Vet; and appointed NUON Chea, POL Pot, SON Sen, IENG Sary and SAO

fighting imperialism, 'liberating' the country and people, and conducting a successful revolution.[2259] In order to accomplish these goals, the Party determined that it would focus on the strategic force of the peasants in remote bases, pursue a political and armed struggle, be self-reliant, and struggle against the class system.[2260] The Congress decreed that foreign imperialists, their "lackeys" or henchmen and the "feudalists, capitalists and reactionaries" were all class enemies.[2261] Although the revolution would continue in the cities, the Congress decided that cities could not be used as bases: their geographical scope was small and enemies were everywhere.[2262] Finally, secrecy was necessary to avoid the leaders being discovered and the revolution ended before it even began.[2263] While continuing the political struggle,[2264] in 1961, the Party began to build secret defence units and educate members as to the need for armed struggle.[2265]

Phim to the Standing Committee (Section 3: Historical Background, para. 87; Administrative Structures, paras 202-203).

[2259] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 20, ERN (En) 00762392; NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 15, ERN (En) 00184666; French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, pp. 1-2, ERN (En) 00751831-2 (Concerning the three point programme adopted at the First Congress).

[2260] T. 13 December 2011 (NUON Chea), pp. 3-4; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 20, ERN (En) 00762392; NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 15, ERN (En) 00184666 (At the first party congress, it was determined that the revolution would be based on the party slogan of long-lasting struggle, difficulties, sorrows, self-reliance, independence and mastery. The force to achieve this was the peasant-worker alliance); French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, pp. 1-2, ERN (En) 00751831-2 (The CPK chose secrecy and violence from outset as it knew parliament would not get them anywhere); Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, pp. 13-14, 16, 18, ERN (En) 00715057-8, 00715060, 00715062 (Tasks of the revolution included struggles against imperialists and the class system).

[2261] T. 22 November 2011 (NUON Chea), pp. 81-85; T. 11 January 2012 (NUON Chea), pp. 19-21; *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS Collection), E3/147, 17 January 1977, ERN (En) 00168467; *Revolutionary Flag*, December 1976-January 1977, E3/25, ERN (En) 00491412 (It was imperative to attack and bring down the feudalists, capitalists and reactionaries).

[2262] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 25, ERN (En) 00715069.

[2263] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 14, ERN (En) 00715058; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393.

[2264] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393 (After 1960, the Party continued some political work in the parliament, administration and press for the purposes of mobilizing popular forces), p. 34, ERN (En) 00762406 (Legal struggle in the cities included newspapers, demonstrations, assembly and lobbying politicians).

[2265] T. 13 December 2011 (NUON Chea), p. 8 (The secret defence units were intended to defend and escort cadres who travelled from one village to the next); *NUON Chea's Speech at Army Anniversary Meeting* (in SWB Collection), E3/209, 17 January 1977, pp. 2-3, ERN (En) 00419490-1 (In 1961, they began to organise secret defence units and by 1966, there were at least three people in each unit at bases throughout the country); *Interview with IENG Sary* (The Call), E3/652, 28 August 1978, p. 2, ERN (En) S 00011847 (There was much ideological work to do including educating members that the

727. At the Second Party Congress in February 1963, POL Pot (now Party Secretary), NUON Chea (Deputy Secretary), IENG Sary, VORN Vet, ROS Nhim, Ta Mok, SAO Phim, likely SON Sen and others affirmed the line adopted at the First Party Congress, including political and armed revolution.[2266] Between 1963 and 1967, there were Standing and Central Committee meetings in the maquis,[2267] some attended by NUON Chea.[2268] During this party-building phase of the revolution, there were three priorities: increasing the people's movements; defensive revolutionary violence and armed struggle; and building revolutionary bases.[2269] IENG Sary later defined a base as a location where the people understood the revolution, hated the enemy, were self-sufficient and had a secret defence unit.[2270]

14.1.2. *Phase Two: Initiation of the Armed Revolution*

728. Following peasant rebellions and popular demonstrations, including at Samlaut in 1967,[2271] the government made scapegoats for the unrest out of KHIEU Samphan, HU Nim and HOU Youn, who all fled to the maquis where they were protected by the Party.[2272] KHIEU Samphan stated that he chose to join the Khmer Rouge, despite its

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reform struggles were important, but that only armed struggle could give the party political power); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393.

[2266] Party Secretary TOU Samuth was likely arrested around February 1962 and disappeared, necessitating another Congress to elect a new secretary. Full-rights members of the Standing Committee included POL Pot, SAO Phim, IENG Sary, Ta Mok and NUON Chea. POL Pot was elected Party Secretary and NUON Chea was re-elected Deputy Secretary (Section 3: Historical Background, para. 89; Section 5: Administrative Structures, paras 202-203).

[2267] Soon after the Second Congress, faced with increasing government pressure, many Party leaders went underground in the maquis (Section 3: Historical Background, para. 89; Section 5: Administrative Structures, paras 202-203; Section 7: Roles and Functions – Nuon Chea, para. 309).

[2268] T. 6 December 2011 (NUON Chea), pp. 7-9, 11 (NUON Chea met with POL Pot and other leaders about every 1-2 months after they went to the maquis); T. 12 January 2012 (NUON Chea), pp. 20-24 (Between 1963 and 1966, there were Central Committee meetings, some of which NUON Chea attended); NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 17, ERN (En) 00184668 (NUON Chea would go back and forth between Kampong Cham and later Ratanakiri where POL Pot was based and Phnom Penh).

[2269] Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 6, ERN (En) S 00011549; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 20, ERN (En) 00762392; OTAN Memorandum, Subject: Recent Political Developments in Cambodia, E3/493, 28 October 1977, p. 2, ERN (En) 00700575.

[2270] Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 6, ERN (En) S 00011549.

[2271] Section 3: Historical Background, para. 91; Section 8: Roles and Functions – Khieu Samphan, para. 361.

[2272] Section 3: Historical Background, paras 89, 92; Section 7: Roles and Functions – Nuon Chea, para. 309; Section 8: Roles and Functions – Khieu Samphan, para. 361; *see also*, T. 13 December 2011 (KHIEU Samphan), p. 88 ("I became an expensive commodity for the CPK. The fact that I forced

image and its actions, because the Khmer Rouge fought for Cambodia's independence and sovereignty.[2273]

729. In late 1967 or early 1968, POL Pot, NUON Chea and others determined that the armed revolution should begin.[2274] In January 1968, NUON Chea convened a meeting in Phnom Penh with several Zone leaders, including SAO Phim, ROS Nhim and Ta Mok. Together, they discussed the need to begin armed struggle against those in power, namely the LON Nol faction which was then in charge of the government, in regions where they considered the latter were intensifying their "acts of suppression."[2275] Further, in September 1969 at an enlarged meeting of the Standing Committee in Ratanakiri, attended by NUON Chea, POL Pot, IENG Sary and KOY

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myself to flee Phnom Penh was a good opportunity for them so that I could be brought along with them").

[2273] T. 23 November 2011 (KHIEU Samphan Opening Statement), pp. 12-13 (KHIEU Samphan contributed to the national reconciliation in order to defend the country, to be a sovereign, independent nation); T. 13 December 2011 (KHIEU Samphan), p. 91 (KHIEU Samphan felt that he could not allow his country to fall into Vietnamese hands so he joined the party in 1969); Correspondence with KHIEU Samphan, E3/3193, undated, p. 4, ERN (En) 00002777 (KHIEU Samphan reiterated that he could not avoid taking sides and thus chose to side with the Khmer Rouge, despite their image, despite even severe contradictions in their actions, as they were fighting to defend the country's sovereignty); KHIEU Samphan Interview Transcript, E3/3196, undated, p. 10, ERN (En) 00815873 ("I joined hands with POL Pot to struggle even though I did not have power or any privilege, and I was promoted to a high position". The Khmer Rouge aimed to resist the foreign invasion of Cambodia. "This is called patriotism"); KHIEU Samphan Interview Transcript, E3/3203, undated, p. 5, ERN (En) 00814201 (KHIEU Samphan joined the CPK when he fled into the jungle); KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 30 December 2007, p. 3, ERN (En) 00170883 (Due to events, he had to go with the flow and live under the protection of a movement not suited to his style of life and education); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 29, ERN (En) 00103737 (He was excited to see a new national force, a real national force, taking root in the heart of farmers living in the countryside and was comforted).

[2274] T. 22 November 2011 (NUON Chea), pp. 86-87 (On 1 January 1968, all secretaries and other leaders met and determined to initiate the armed struggle); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 22, ERN (En) 00762394 (At a meeting in January 1968, it was decided to start the armed struggle); NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 18, ERN (En) 00184669 (In late 1967, NUON Chea, MA Maing, Ta Mok, SAO Phim and VORN Vet met and decided to commence the armed struggle); CHEA Sim Interview Transcript, E3/1568, 3 December 1991, p. 1, ERN (En) 00651862 (In 1968, orders came from the Centre to take up arms); Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 26, ERN (En) 00715070 (After mid-1967, the party decided to start armed struggle against the enemy soon. If not, then the enemy would definitely destroy the party); *Revolutionary Flag*, E3/11, Sept 1977, p. 20, ERN (En) 00486239 (In the middle of 1967, the Party decided to start the armed struggle); *see also*, Section 7: Roles and Functions – Nuon Chea, para. 334.

[2275] T. 22 November 2011 (NUON Chea), pp. 86-87; T. 30 January 2012 (NUON Chea), pp. 33-34 (Citing Notes Used by Accused NUON Chea during the Hearing of 5 December 2011, E148, referring to 1 January 1968 meeting with Zone Secretaries where it was decided to initiate the armed struggle); T. 31 January 2012 (NUON Chea), p. 39 (Armed struggle initiated in 1968 because of "oppression by the authority like Kou Roun or the Lon Nol clique"); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 29, ERN (En) 00762394 (At a Central Committee meeting in January 1968, it was decided that they could no longer continue the legal struggle and had to start the uprising).

Thuon,[2276] it was decided that the CPK would mobilise all forces to fight against LON Nol and his right-wing faction of the government.[2277]

730. The Party would later celebrate 17 January 1968 as the anniversary of the RAK, the date when the secret defence units were re-organised into guerrilla units and attacked Bay Damram.[2278] From April 1968 to March 1970, the armed revolution was allegedly being fought in 17 of 19 provinces.[2279] POL Pot, NUON Chea and KHIEU Samphan later claimed that, prior to 18 March 1970, there were limited resources and Party forces were isolated.[2280]

14.1.3. *Phase Three: The Democratic Revolution*

731. POL Pot explained that of the Party's two tasks – struggles against imperialism and the class system – the struggle against the imperialists had to come first.[2281] In order to liberate the country from the imperialists, it was deemed necessary to build a resistance front to wage a democratic revolution, incorporating all factions opposed to the Khmer Republic, including capitalists, feudalists, monks and civil servants.[2282]

[2276] T. 30 January 2012 (NUON Chea), pp. 34-35 (Citing NUON Chea Interview with KHEM Ngun, E3/3, May 1998, ERN (En) 00184671); Notes Used by Accused NUON Chea during the Hearing of 5 December 2011, E148, December 2011, ERN (En) 00950525 (Noting that, in 1969, NUON Chea went to Ratanakiri); T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 88-89 (NUON Chea came to Ratanakiri once in late 1969 for a few days and met with POL Pot, IENG Sary and KOY Thuon).

[2277] DK Publication: *Black Paper*, E3/23, September 1978, ERN (En) 00082528 (In 1969 the Central Committee elaborated a document stating that Party should attack the U.S. imperialists and the traitor LON Nol, not Sihanouk, and mobilise all forces capable to be mobilized to fight and isolate the enemy); *Revolutionary Flag*, E3/5, August 1975, ERN (En) 00401495 (In 1969, "we fought the Lon Nol traitors").

[2278] Section 3: Historical Background, para. 93.

[2279] *NUON Chea's Speech at Army Anniversary Meeting* (in SWB Collection), E3/209, 17 January 1977, pp. 2-3, ERN (En) 00419490-1; Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 8, ERN (En) S 00011551.

[2280] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 26, ERN (En) 00715070; French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, p. 2, ERN (En) 00751832; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 33, ERN (En) 00103739 (After Samlaut, the CPK was in danger of being decapitated unless it took up arms against LON Nol, but it had no weapons), p. 36, ERN (En) 00103741 (The armed struggles in 1968-1969 were difficult with little arms, ammunition or food and the sacrifices made were enormous).

[2281] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 21, ERN (En) 00715065.

[2282] T. 13 December 2011 (NUON Chea), p. 4 (Capitalists could not be eliminated immediately as they were still necessary in the democratic revolutionary phase); KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, p. 13, ERN (En) 00644937 (The resistance strived to build up their forces in every field, self-reliantly); French Ministry of Foreign Affairs Telegram, Subject: Situation in Cambodia: Mr. POL Pot Official Visit to China and North Korea, E3/484, 26 October 1977, p. 5, ERN (En) 00771184 (POL Pot declared that after the coup in

Secrecy remained essential as there was not yet an orderly structure and it was feared that there could be consequences if the party and its leaders were known publicly.[2283] The Party therefore also required the assistance of those, such as NORODOM Sihanouk, with international influence and recognition among all factions in Cambodia to act as a united front.[2284] The overthrow of NORODOM Sihanouk on 18 March 1970 provided the Party leadership their opportunity. Indeed, the Party leadership claimed to have anticipated this event, preparing before March 1970 to wage the democratic revolution at the head of a united front.[2285] After POL Pot pledged Khmer Rouge support for FUNK, NORODOM Sihanouk formed GRUNK in May 1970.[2286] The Chamber has already found that FUNK/GRUNK was merely a façade; the Khmer Rouge in fact had control of the conduct of the democratic revolution and government of the liberated Zones.[2287]

732. In October 1970, the Central Committee, including POL Pot, NUON Chea, IENG Sary, Ta Mok, SAO Phim, KOY Thuon and other Zone secretaries, discussed a plan to liberate Cambodia from the American imperialists and Khmer Republic and

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March 1970, the Party decided to adopt a frontist policy, based on a worker-peasant alliance involving patriotic capitalists and monks); DK Document: Concerning the Grasp and Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, p. 1, ERN (En) 00244274 (Front forces, including students and civil servants, were mobilised during the revolution); Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 23, ERN (En) 00715067 (Without a frontist policy, there was no way they could have won the revolution).

[2283] T. 13 December 2011 (NUON Chea), pp. 24-25.

[2284] NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 7, ERN (En) 00329510 (The Khmer Rouge supported NORODOM Sihanouk because of his influence on the world stage); French Foreign Ministry Telegram, E3/2699, 19 April 1975, p. 2, ERN (En) 00504000 (NORODOM Sihanouk appeared to have the role of uniting different segments of the population); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 42, ERN (En) 00103744 (There were two determining factors in the country's salvation: the CPK was the only force capable of leading the struggle on the ground and NORODOM Sihanouk was necessary to win international support).

[2285] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 33, ERN (En) 00762405 (The Khmer Rouge were masters of the situation with an army and some weapons and were therefore able to form a united front with NORODOM Sihanouk, reducing him to nothing and making the Khmer Rouge masters of everything, in the cities and countryside); *Interview with a Cambodian Revolutionary* (Le Monde), E3/597, 15 January 1972, p. 2, ERN (En) 00003964 (IENG Sary explained that they had long foreseen the coup d'état and therefore, before it, the Party achieved political mobilisation of the masses with a view to leading the long-term war of resistance); KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 5, ERN (En) 00000929 (KHIEU Samphan explained that POL Pot predicted that there would be a coup against NORODOM Sihanouk by LON Nol).

[2286] Section 3: Historical Background, para. 98.

[2287] Section 3: Historical Background, para. 100; Section 5: Administrative Structures, para. 230.

confirmed the Party's policy of self-reliance and independence.[2288] Thereafter, from October 1970 until 1975, KHIEU Samphan, NUON Chea, POL Pot and other Party leaders met regularly concerning the ongoing revolution and administration of the liberated Zones.[2289] The Party, hiding behind the FUNK/GRUNK façade,[2290] fought against an enemy they defined as the American imperialists and "their lackeys", the "clique of traitors" in the LON Nol regime.[2291] During the war, the Party waged military and political struggle based on four main tactics: taking people from the enemy, cutting off the food supply line, destroying the enemy spy network and

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[2288] DK Publication: *Black Paper*, E3/23, September 1978, pp. 57-58, ERN (En) 00082541-2 (In October 1970, the Central Committee considered the situation in the country in order to pursue the struggle for national liberation. They agreed to abide by the position of independence and self-reliance, in order to mobilise all forces); T. 6 December 2011 (NUON Chea), p. 12 (POL Pot convened a Central Committee meeting in Kampong Thom Province in 1970); T. 30 January 2012 (NUON Chea), pp. 36-37 (In the meeting in October 1970, NUON Chea and members of the Central Committee were appointed to control each Zone including Ta Mok (Southwest), SAO Phim (East), KOY Thuon (North)).

[2289] KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 4-6, ERN (En) 00156744-6 (After the coup, KHIEU Samphan met with POL Pot and NUON Chea. He thereafter stayed with POL Pot and various Zone secretaries would come to meet with POL Pot); T. 11 June 2013 (SO Socheat), pp. 73-74 (KHIEU Samphan, POL Pot and NUON Chea were together in 1972 when KHIEU Samphan was married); T. 13 June 2012 (OEUN Tan), pp. 29-31 (In mid-1970, IENG Sary, KHIEU Samphan, POL Pot and NUON Chea met together in Kampong Cham); OEUN Tan Interview Record, E3/33, 9 October 2008, p. 2, ERN (En) 00235126; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 4 (When POL Pot was away from S-71, KHIEU Samphan and NUON Chea would be there), 5-6 (NUON Chea would go meet with Zone leaders, including a trip to meet with ROS Nhim in the Northwest Zone in 1972), 9-10 (There were regular meetings at the centre level including leaders of the Zones. There were big meetings and study sessions in particular in 1971 and 1974. At all meetings there would be updates about the general situation of the resistance movement and progress in the liberated Zones with reports from the Zones), 17-21 (After B-5 was established in 1973, other leaders had offices nearby including VORN Vet, CHENG An, SON Sen and Ta Mok); T. 30 January 2012 (NUON Chea), p. 26 (B-5 was an office established during the attack on Phnom Penh where POL Pot, sometimes NUON Chea and Zone leaders would meet); *see also*, Section 6: Communication Structure, para. 271; Section 7: Roles and Functions – Nuon Chea, para. 325; Section 8: Roles and Functions – Khieu Samphan, para. 366.

[2290] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393 (The enemy knew the names of FUNK/GRUNK leaders, but did not know the names of the real leaders which allowed them to work safely), p. 23, ERN (En) 00762395 (After the coup, the Party continued to build on the secret struggle as a fundamental tactic).

[2291] KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, pp. 12-13, ERN 00644937 (Following the 18 March 1970 coup, the U.S. had a military hold in Cambodia and "us[ed] puppet troops of Thieu-Ky and of the LON Nol traitorous clique as tools of their aggression"); IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, pp. 2-3, ERN (En) 00762413 (They were fighting against the "clique of traitors" which was totally reliant on American aid); POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, pp. 6-7, 9, ERN (En) S 00012703-4, S 00012706 (Civil war between 1968 and March 1970 was a period of struggle for national liberation from the imperialists); Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 2, ERN (En) S 00011545 (IENG Sary explained that from March 1970 to April 1975, there was a war to liberate Cambodia from USA imperialism).

persuading the enemy's group to defect.[2292] The peasants remained the class that provided the main forces for the revolution. Capitalists were necessary allies, but could not be relied upon: "they follow[ed] the direction of the wind".[2293]

733. At the Third Party Congress in 1971, NUON Chea, POL Pot, KHIEU Samphan (now a candidate member of the Central Committee), IENG Sary, KOY Thuon, KE Pauk, Doeun, SAO Phim, VORN Vet, Ta Mok, ROS Nhim and others decided to change the name of the Party to the CPK, created the Special Zone around Phnom Penh and reaffirmed the Party line from the First and Second Congresses, including commitment to the class struggle.[2294]

734. After the Third Party Congress, in late 1971, 1972 and, in particular, 1973, the Party began implementing a collectivisation policy through mutual aid organisations and then, by establishing cooperatives in rural areas.[2295] In 1972, IENG Sary explained that, according to the political programme in the liberated Zones, agriculture was of primary importance. Measures were being taken to mobilise the peasants and free them from the old structures, thereby increasing production and advancing the collective movement.[2296] The "self-reliance guideline" required people to provide for their own needs and support the resistance.[2297] According to NUON Chea, over time, due to suffering and hardship, the party line concerning class struggle and hatred was engrained in the people in the liberated Zones.[2298] While

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[2292] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 32, ERN (En) 00715076.

[2293] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 22, ERN (En) 00715066. In this regard, KHIEU Samphan noted that POL Pot initially refused to meet NORODOM Sihanouk considering the ultimate aims of the revolution (T. 13 December 2011 (KHIEU Samphan), pp. 89-90).

[2294] Section 3: Historical Background, para. 95; *see also*, Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 106, ERN (En) 00103776 (In the middle of 1971, there was a meeting of all executives of the different bases where POL Pot declared that the CPK was able to form and develop by going through the worst ordeals of class and national struggle, and because it dared rely on the peasantry).

[2295] Section 3: Historical Background, para. 113.

[2296] IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, pp. 7-9, ERN (En) 00762415-6 (The land of the traitors was distributed to the common good or those peasants who did not have land. The political programme included: agitation work to drive peasants to the agrarian policy and organisation of all peasants who approve the agrarian reform into a patriotic peasants' association. Cooperatives and mutual aid were encouraged).

[2297] IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 10, ERN (En) 00762417.

[2298] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 23, ERN (En) 00762395.

fighting the imperialists under the cover, and with the assistance, of FUNK/GRUNK, the Party had also begun the socialist revolution in the liberated Zones.[2299]

735. In June 1974, the Central Committee, including members and candidate members POL Pot, NUON Chea, KHIEU Samphan, SAO Phim, KOY Thuon, Ta Mok, VORN Vet, ROS Nhim and SON Sen,[2300] pursuant to the principle of democratic centralism, planned the final offensive to liberate the country and evacuate the population of the cities to rural areas.[2301] KHIEU Samphan, POL Pot, NUON Chea, army commanders and/or Zone secretaries later met at B-5, west of Oudong, in particular in February and early April 1975, concerning the final offensive, movement of the population and other measures to be implemented upon victory.[2302]

14.1.4. *Phase Four: The Socialist Revolution*

736. On 17 April 1975, the Khmer Rouge succeeded in 'liberating' the country and the Party entered a new phase of the revolution: the socialist revolution.[2303] KHIEU Samphan attributed this success to the correct party line adhered to during prior phases of the revolution.[2304] The Party therefore based the policies and goals pursued during the socialist revolution on its experiences during the war and in the liberated

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[2299] *Id.*
[2300] Section 3: Historical Background, paras 133-142.
[2301] Section 3: Historical Background, paras 133-142.
[2302] Section 3: Historical Background, paras 143-147; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750 (By the end of March 1975, he was invited to POL Pot's headquarters west of Oudong to follow the last offensive. Every day, with a few army officers, he followed the battles' progression on the radio).
[2303] *NUON Chea's Speech at Army Anniversary Meeting* (in SWB Collection), E3/209, 17 January 1977, p. 4, ERN (En) 00419492 (The new phase of the revolution was to build and defend the country); IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, paras 34, 44, 48, 51, ERN (En) 00079811-3 (The people of Kampuchea were struggling to defend and build the country in the new stage of their revolution, struggling to safeguard the gains of the revolution. The position was won by constant education by the CPK); Notes by Representative of the Norwegian Marxist Party, E3/564, 20 September 1978, p. 2, ERN (En) S 00011545 (IENG Sary explained that from 1975, it was a period of socialist revolution and construction); DK Document: Concerning the Grasp and Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, pp. 2-3, ERN (En) 00244275-6 (The Party had previously mobilised forces to fight the enemy and liberate the country and was now mobilizing forces to defend and rebuild country); *see also*, Section 11: Movement of the Population (Phase Two), para. 576.
[2304] KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, p. 14, ERN 00644938.

Zones.[2305]

737. As expected by all those who were involved in the conflict, including the Khmer Rouge leaders themselves, the country had to face shortages of food and other resources, but the CPK leadership considered that the first priority was the need to secure Kampuchea from both internal and external threats.[2306] Thus, in order to save the country and ensure it moved quickly to the next steps of the revolution, the CPK leaders considered that radical policies should be implemented immediately.[2307] Further, in order to build a solid foundation, thereby warding off attacks by external enemies, the socialist revolution had to be fast.[2308] All people, both military and

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[2305] *What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 2, ERN (En) 00185419 (IENG Sary explained that as they were not relying on any models, they would learn from experience); IENG Sary Interview Notes by Stephen HEDER, E3/573, 4 January 1999, p. 2, ERN (En) 00427600 (IENG Sary said that, having won the war, POL Pot and NUON Chea believed they could do no wrong and everything was based on the line of 1970-5).

[2306] T. 13 December 2011 (NUON Chea), p. 29 (There was insufficient food and other social problems); IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976, p. 6, ERN (En) 00586803 (The country was in poor shape (including factories, fields and livestock) when the Khmer Rouge took power); *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, pp. 1-2, 6, ERN (En) S 00004164-5, S 00004169 (After the war, they were deprived of food, tools and cattle); NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 10, ERN (En) 00329513 (When the Khmer Rouge took power, they were faced with illness, food shortages and bad groups); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 4, ERN (En) 00413793 (IENG Sary explained at the Non-Aligned Summit that there were many problems in Cambodia after the ravages of war); KHIEU Samphan Interview Transcript, E3/4048, undated, pp. 1-2, ERN (En) 00790540-1 (Even in the countryside, the people could hardly feed themselves); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 17, ERN (En) 00003253 (Difficult factors included the lack of food, cattle, buffalo and many illnesses), p. 51, ERN (En) 00003287 (There was a shortage of food, medicine and shelter).

[2307] KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 6, ERN (En) 00000930; Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 68, ERN (En) 00103757 (Describing the socialist revolution as an ultra-radical movement), p. 103, ERN (En) 00103774 (The Khmer Rouge had ultra-radical polices between 1975 and 1978); *see also*, Section 10: Movement of the Population (Phase One), paras 526, 530-534 (Concerning alleged fear of plots by foreign agents and former LON Nol officials, and the need to avoid foreign invasion).

[2308] IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 1, ERN (En) 00442661 (It was necessary for a more formidable communist foundation in Kampuchea to protect it from outside threats such as Vietnam. That was why the revolution was fast); IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 38, ERN (En) 00182335 (Policies implemented out of fear of the Vietnamese included cooperatives and population movement because they knew that the Vietnamese had a plot ready in Phnom Penh to overthrow them); *The Amnesia of Brother No. 2* (Phnom Penh Post), E3/663, 12-25 January 2007, p. 4, ERN (En) 00087608 (The Party believed that the country had to be developed very quickly or else remain at the bottom); *Speech by Comrade Nuon Chea* (DK News Bulletin), E3/78, 18 January 1978, p. 7, ERN (En) 00290285 (To ensure defence, they must build the country quickly); KHIEU Samphan Interview Transcript, E3/3198, undated, p. 7, ERN (En) 00815882 (Vietnam was ambitious to take control of Cambodia: "Thus, we had to run quickly"); KHIEU Samphan Interview Transcript, E3/4022, undated, p. 1, ERN (En) 00793388 (POL Pot kept saying that the CPK had to move fast so that the Vietnamese would not be able to catch up. After liberation, considering the starvation and threat from Vietnam, there was no time for delay); KHIEU

civilian, were mobilised rapidly to build and defend the country in an attempt to ensure the future security and well-being of the people through a socialist revolution.[2309] This Party line, both internally and externally, was based upon the principles of "independence-sovereignty", collectivism and self-reliance.[2310] In turn, the class system would be eliminated,[2311] no international aid would be accepted unless it was unconditional,[2312] and all embassies would be closed, at least temporarily.[2313] Further, the Party considered that it was essential to continue with a

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Samphan Interview Transcript, E3/4043, undated, p. 2, ERN (En) 00786110 (As time went on, the revolution had to be expedited: "one of our slogans was we need to move rapidly". After the war, "we had to continue to run, to run even faster").

[2309] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 45, ERN (En) 000798113 (All forces had to be mobilized to build the country and effect a rapid improvement in the living standards of the people); IENG Sary Speech at a Banquet Welcoming the Delegation of the American Communist Party, E3/211, 22 April 1978, p. 3, ERN (En) S 00004782 (It was necessary to mobilise all forces); POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, p. 19, ERN (En) S 00012709 (No force or person should remain "unmoved" in defending and building the country rapidly); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603 (Cambodia was like a giant work-shop: everyone worked day and night to re-build the country); DK Foreign Ministry Notebook, E3/925, 1976-1979, pp. 16-17, ERN (En) 00003252-3 (Everyone put national and collective interests above everything else. No one remained unoccupied).

[2310] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, paras 61, 65, ERN (En) 00079815 (The Party leadership focused on independence and self-reliance); POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, p. 20, ERN (En) S 00012709; DK Foreign Ministry Notebook, E3/925, 1976-1979, pp. 8-9, ERN (En) 00003244-5 (The socialist revolution was to smash individual ownership. In doing so, the party adhered to the principles of independence-mastery and self-reliance), p. 18, ERN (En) 00003254 (The basic standpoints to implement tasks of national construction and defence included self-reliance, collectivism, and long-term struggle and combat).

[2311] IENG Sary Speech at a Banquet Welcoming the Delegation of the American Communist Party, E3/211, 22 April 1978, p. 3, ERN (En) S 00004782 (The people's forces were responsible for improving the country without exploiting class and exploited class); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 43, ERN (En) 00003279 (In the national democratic revolution phase, dedication was to the Front, while in the socialist revolution phase, other classes had to be cut out); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 67, ERN (En) 00103756 (Rapid communisation of the country implied a wide ideological campaign to awaken the peasants' class consciousness); *see also*, Section 11: Movement of the Population (Phase Two), paras 613-614.

[2312] IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 33, ERN (En) 00182330 (They refused international aid on the basis of radical self-sufficiency); IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 1, ERN (En) 00342500 (Cambodia refused international aid after victory in 1975 for many reasons including fear of American bombing); French Ministry of Foreign Affairs Telegram, Subject: Cambodia, E3/2667, 28 August 1975, p. 2, ERN (En) 00503979 (Kim Il Sung offered to donate 10,000 tractors to Cambodia. KHIEU Samphan replied that the Cambodian people, through their hard and unrelenting labour, would find the means to purchase the equipment that would enable them to manufacture for themselves the 10,000 or more tractors they would need in the future).

[2313] French Foreign Ministry Telegram, Subject: Interview with SIEN An, GRUNK Ambassador in Peking, E3/2720, 28 April 1975, p. 2, ERN (En) 00517789; GRUNK Special Envoy CHAU Seng Statement, E3/1340, 30 April 1975, p. 1, ERN (En) 00797530.

closed, secret approach[2314] in order to prevent enemy infiltration,[2315] and to build bases and resolve internal issues before foreigners could be welcomed.[2316] Open opposition to the party line was not tolerated.[2317]

738. Over the course of the DK era, Party leaders, including POL Pot in 1977,[2318] and 1978;[2319] NUON Chea in 1977[2320] and 1978;[2321] IENG Sary in 1975,[2322] 1976,[2323]

[2314] Standing Committee Minutes, E3/229, 22 February 1976, ERN (En) 00182626 (Concentrate on maintaining secrecy, not letting brothers and sisters zoom around in circles, communications must be quiet); T. 2 May 2012 (SALOTH Ban), pp. 15, 17 (Study sessions taught the principle of keeping secrecy with the slogan, "Disclosing secrecy will lead to death. Keeping secrecy will earn us 80 per cent of victory"); T. 21 August 2012 (KIM Vun), pp. 62-63 (Political education sessions at B-20 discussed the importance of vigilance and maintaining secrecy); T. 7 May 2013 (Philip SHORT), p. 19 (Secrecy was one of the key principles of the Communist Party of Kampuchea. Knowledge was only for those who needed to have it).

[2315] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 27, ERN (En) 00762399 (Secrecy in all aspects of DK (including elections, living places of leaders, meeting times and places) were necessary in order to defend the country from the danger of enemy infiltration).

[2316] T. 13 December 2011 (NUON Chea), p. 26 (Once the Party had a proper structure with support from the masses and overseas, then the announcement of its existence would be made); IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, pp. 33-5, ERN (En) 00182330-2 (In the first stage, they had to build the country, have enough solid bases before the country could be opened).

[2317] IENG Sary Interview by Stephen HEDER, E3/190, 4 January 1999, p. 1, ERN (En) 00081571 (If he openly opposed the CPK line or tried to defect, they all would have been arrested); IENG Sary Interview by ABC Television, E3/93, 6-19 September 1996, p. 7, ERN (En) 00078611 (IENG Sary did not speak out against evacuation of Phnom Penh out of solidarity with the struggle); CPK Statute, E3/130, p. 4, ERN (En) 00184025 (The Party opposed dissent and creation of cliques), p. 13, ERN (En) 00184033 (Anyone opposing the party who caused fractures would be punished with criticism and warnings, change or removal of duty, or rejection from the Party); KHIEU Samphan Interview Transcript, E3/4028, undated, p. 2, ERN (En) 00788918 (When everyone in the party (cadres and leadership) stood the same line, no quarrels would erupt: that was the way things had to be sorted out); KHIEU Samphan Interview Record, E3/210, 14 December 2007, p. 2, ERN (En) 00156948 (POL Pot and the CPK felt threatened by the Vietnamese: this situation meant that it was not possible to envisage any dissidence); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 6, ERN (En) 00156746 (The Party instructed that no one express their personal feelings or opinions, except in meetings); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 8, ERN (En) 00003244 (The Party opposed independent mindedness); KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757 (The Party did not want the public to know that there were disagreements within its ranks).

[2318] French Ministry of Foreign Affairs Telegram, Subject: Visit to China by Prime Minister of Cambodia, E3/2725, 29 September 1977, p. 2, ERN (En) 00721703 (POL Pot gave a speech in which he highlighted the country's self-sufficiency, unity and cohesion); Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 2, ERN (En) 00715046 (The people must build and defend the country. The slogan: a wonderful leap forward).

[2319] POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, p. 19, ERN (En) S 00012709 (The main tasks of the party were to defend DK, carry on socialist revolution and edify socialism); POL Pot Interview with Journalists from Hong Kong, E3/5712, 21 September 1978, p. 15, ERN (En) 00829774 (Immediately after liberation, they went about improving the economy, building the country, addressing issues of food supply all the while upholding independence and self-reliance).

[2320] *NUON Chea's Speech at Army Anniversary Meeting* (in SWB Collection), E3/209, 17 January 1977, p. 4, ERN (En) 00419492 (The new phase of revolution was to build and defend the country).

1977[2324] and 1978;[2325] and KHIEU Samphan in 1975,[2326] 1976,[2327] 1977[2328] and

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[2321] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 24, ERN (En) 00762396 (Main tasks were defending the country and building socialism); *Speech by Comrade Nuon Chea* (DK News Bulletin), E3/78, 18 January 1978, p. 7, ERN (En) 00290285 (The CPK and people have three tasks: national defence, the socialist revolution and building socialism. To ensure defence, they had to build the country quickly).

[2322] U.S. State Department Telegram, Subject: Ieng Sary Visit to Thailand, E3/3360, 20 November 1975, p. 2, ERN (En) 00413889 (IENG Sary told a Thai representative that Cambodia would be self-reliant and would not take aid); U.S. State Department Telegram, Subject: Prime Minister Khukrit Comments on Visit to Thailand of Cambodian Deputy Prime Minister, E3/3558, 30 October 1975, p. 2, ERN (En) 00413839; U.S. State Department Telegram, Subject: Kennedy Airport Statement by Cambodia's Vice Prime Minister IENG Sary, E3/620, 1 September 1975, pp. 1-3, ERN (En) 00413740-2 (IENG Sary arrived in New York for the UN General Assembly, declaring that Cambodia was devoted to reconstruction of the country and was one large work-yard. He explained that they were building a wide irrigation net to support two harvests instead of one and by the end of 1975, hoped to be able to satisfy food requirements); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary explained at the Non-Aligned Summit that Cambodia was like a giant work-shop with all working day and night).

[2323] IENG Sary Speech at a Banquet in Honour of the Diplomatic Corps, E3/606, 17 April 1976, pp. 3-4, ERN (En) 00509719-20 (The people were united in the past year in an effort to build the country by cultivation and waterworks. The focus was on independence, sovereignty, self-reliance); IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976, pp. 6-8, ERN (En) 00586803-5 (There was a revolutionary mass movement to defend and build the country. The political line was independence, sovereignty and self-reliance).

[2324] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, paras 34, 44, 48, 51, ERN (En) 00079811-3 (The people were struggling to defend and build the country in the new stage of their revolution. The position was won by constant education); *Burmese Government Delegation in Cambodia* (in SWB Collection), E3/1590, 3 September 1977, p. 1, ERN (En) S 00007893 (The CPK was focused on the tasks of defending and building the country, adhering to the stand of independence and self-reliance).

[2325] *Banquet Offered by Comrade Deputy-Prime Minister IENG Sary* (DK News Bulletin), E3/1396, 6 December 1978, p. 3, ERN (En) S 00013938 (IENG Sary told diplomats that they would see the efforts of the people in building the country and improving their standard of living, abiding by a position of independence, sovereignty and self-reliance); IENG Sary Speech at UN General Assembly, 10th Session, E3/547, 9 June 1978, pp. 31-32, ERN (En) 00081532-3 (DK was struggling to maintain its self-reliance, defend and safeguard the fruits of the revolution and build the country); IENG Sary Speech at a Banquet Welcoming the Delegation of the American Communist Party, E3/211, 22 April 1978, p. 2, ERN (En) S 00004781; IENG Sary Speech at Welcome Banquet of Thai Foreign Ministry, E3/1587, 30 January 1978, pp. 2-3, ERN (En) 00280650-1 (The DK always had a strong commitment to non-interference, independence, self-reliance and non-aggression); DK Telegram, E3/4605, 16 September 1978, p. 1, ERN (En) 00095649 (IENG Sary rejected a decision of the Sub-commission on the Prevention of Discrimination and Protection of Minorities decision condemning human rights violations in Cambodia and declared that, after three years, DK had succeeded in solving fundamental problems, was self-sufficient in food, building and defending the country, and relied on nothing from the imperialists).

[2326] U.S. State Department Telegram, Subject: KHIEU Samphan Visit to PRC, E3/619, 16 August 1975, pp. 1-2, ERN (En) 00413732-3 (While in Peking, KHIEU Samphan emphasised the reconstruction efforts of the country. He listed Cambodia's new tasks to include defending the state, rehabilitating the economy and building the country at a rapid speed. He said the whole country had become a big construction site); *KHIEU Samphan 21 April Victory Message on Phnom Penh Radio* (in SWB Collection), E3/118, 21 April 1975, p. 108, ERN (En) 00166995 (KHIEU Samphan praised the sacrifice of the people in the liberated Zones and their efforts building dikes, canals and reservoirs); *see also*, T. 7 May 2013 (Philip SHORT), pp. 9-10, 17-19 (In October 1975, KHIEU Samphan lectured hundreds of returning intellectuals at the Khmer Soviet Technical Institute, explaining, amongst other things, that the evacuation of the cities was necessary to destroy private property).

1978,[2329] in speeches, interviews and statements, publicly confirmed and endorsed the party line to rapidly build and defend the country through a socialist revolution based on the principles of secrecy, independence-sovereignty, self-reliance and collectivisation.

14.1.4.1. *CPK Takeover and Interim Organisation of Power following Liberation*

739. From 17 April 1975 to 25 April 1975, at the latest, while the evacuation of all cities was ongoing, Phnom Penh was under the direct control of military units under the command of Zone secretaries including SAO Phim, KOY Thuon, Ta Mok and VORN Vet.[2330] Consistent with the procedures followed throughout military campaigns between 1970 and 1975, whereby the senior leaders received reports and issued instructions to Zone leaders commanding the forces on the ground, the Zone secretaries commanding military units in control of Phnom Penh after liberation, sought and received instructions from POL Pot, NUON Chea, SON Sen and other senior leaders, in particular members of the Central Committee, at B-5.[2331] Further,

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[2327] KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, p. 10, ERN 00644935 (DK was devoted to the principles of self-reliance, independence and neutrality).

[2328] *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, pp. 1-2, 6, ERN (En) S 00004164-5, S 00004169 (Continuing focus on building, defending, preserving the fruits of the revolution, and self-reliance); *Statement by KHIEU Samphan* (in SWB Collection), E3/267, 30 December 1977, pp. 6-7, ERN (En) S 00008729-30 (The CPK was a clear-sighted party. The Cambodian army and people already fought and defeated the U.S. imperialists and their lackeys. Support bases had to increase production by constantly adhering to the stance of independence).

[2329] KHIEU Samphan Speech at Third Anniversary of Founding of DK, E3/169, 17 April 1978, pp. 2-3, ERN (En) 00280390-1 (In addressing members of the CPK during a public meeting, KHIEU Samphan stated that CPK members are determined to ardently accomplish the noble revolutionary tasks entrusted to them by the Party and continue to succeed in great leaps and bounds), p. 10, ERN (En) 00280398 ("We must defend tooth and nail the country, the Revolution, the power, the people, the Army, the Party and the Kampuchean race. We can only succeed if we properly implement the Party line in external as well as internal defence. All the units throughout the country must continue to increase their revolutionary vigilance. […] we must continue with impetuosity and dynamism to pursue the tasks of nation building in the countryside, factories, services and organizations"), p. 2, ERN (En) 00280390 ("We have to seize this excellent opportunity to accomplish the tasks the Party has set for the year 1978 with more ardour and to win victories in all the domains by leaps and bounds"), pp. 4-5, ERN (En) 00280393 (stating the party lines are based on the defence of Cambodia and nation-building.)

[2330] Section 3: Historical Background, paras 148-151; Section 10: Movement of the Population (Phase One), para. 460.

[2331] Section 3: Historical Background, paras 148-152; T. 5 June 2013 (Sydney SCHANBERG), pp. 46-47 (A Khmer Rouge military leader at the Ministry of Information on 17 April stated that the fate of the gathered officials depended on the government, adding that some of the top political and governmental leaders were not far from the city). Members of the Central Committee issued directives during the offensive on Phnom Penh (*see e.g.* Document by KE Pauk: *Autobiography of Ke Pauk from 1949-*

the evacuation of Phnom Penh was supervised by a committee, created by the Central Committee in June 1974, chaired by SON Sen and including KOY Thuon and various Zone leaders.[2332]

740. Having all arrived in Phnom Penh by 25 April 1975, at the latest,[2333] NUON Chea, POL Pot, KHIEU Samphan, IENG Sary and SON Sen formed a Joint

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1985, E3/2782, undated, ERN (En) 00089711 (The Central Committee conducted a meeting in July 1974 in which they assigned him to Siem Reap to defend Angkor. He resigned from his position as Zone Staff for the purpose of defending Angkor. KOY Thuon was ordered to take charge of his troops moving into Phnom Penh); T. 13 December 2011 (KHIEU Samphan), p. 94 (POL Pot called KHIEU Samphan to headquarters in order to participate and to listen to what he did with the military cadre from various battlefields who came to report to him and listen to him, how he gave directions back to those people, so that KHIEU Samphan could understand the situation of the revolution and could report to NORODOM Sihanouk)). Generally, throughout the revolution, POL Pot, NUON Chea, SON Sen and the Central Committee oversaw military campaigns (*see e.g.* T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon) p. 39-40 (During the attacks on Kampong Cham town in 1973, senior leaders such as POL Pot, NUON Chea were near Office S-71 and SON Sen at his headquarters at Bos Khnaor; the troops involved in the attack were from the Centre and Sector '304'); T. 9 January 2013 (UNG Ren), pp. 36-37 (The preparatory plan to attack Oudong was solely the responsibility of his brigade commander Cheng An; however, there was an overall plan for the brigade: the Southwest forces were to attack Oudong, and our regiment was to prepare for the attack on the South of Oudong), 38 (After the attack on Oudong, they received information that there was an arrangement from the upper level to manage the spearhead of the Southwest force, the Special Zone force and SON Sen came), 39 (To take on special tasks, such as attacking a battlefield, the upper echelon would not only call a brigade, but also regiments to meet and to relay the orders in order to succeed in the attack); Document by KE Pauk: *Autobiography of Ke Pauk from 1949-1985*, E3/2782, undated, ERN (En) 00089710-11 (In February 1972, the Central Committee ordered him to cooperate with a central unit, Unit 39 led by Brother Khieu, to sweep and clean enemies around Kampong Thom. They prepared forces and fought at the same time. In July 1973, he prepared forces to attack Road 6. The Central Committee held a meeting and declared to fight and clean Road 6. They successfully swept and cleaned those areas. The Central Committee then told him to organize Zone military forces to take over Kampong Cham in two prongs; he and KOY Thuon took one prong each. In September 1973 the Central Committee pledged to attack all over the country and organized many plans, including that the East Zone was to attack from along National Road No. 1, the Southwest Zone from National Road Nos 2, 3 and 4, and the Western Zone from between National Road Nos 4 and 5), ERN (En) 00089711 (After half a month of controlling the position, the higher level brothers decided to launch offensives on Oudong)).

[2332] Section 3 Historical Background, paras 133, 145; Section 10: Movement of the Population (Phase One), paras 531-533.

[2333] POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 8, ERN (En) 00750104 (POL Pot returned to Phnom Penh on 24 April 1975); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 2, ERN (En) 00156742 (KHIEU Samphan entered Phnom Penh about 7-10 days after 17 April 1975), p. 6, ERN (En) 00156746 (KHIEU Samphan, NUON Chea and POL Pot entered together); ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (Witness entered Phnom Penh with SON Sen on 20 April 1975); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 61-62 (By 20 April 1975, all the commanders of the divisions of the surrounding battlefields, including KOY Thuon, SAO Phim, VORN Vet, CHENG An and Ta Mok, were meeting at the Railway Station. NUON Chea came later, maybe on 21 April; POL Pot and KHIEU Samphan came after that); IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 5, ERN (En) 00442665 (IENG Sary returned around 23-25 April 1975); *see also*, Section 7: Roles and Functions – Nuon Chea, para. 317; Section 8: Roles and Functions – Khieu Samphan, para. 373.

Leadership Committee.[2334] On a regular basis, along with various Zone and Autonomous Sector secretaries and others, they met to discuss policies and plans to build and defend a self-reliant, independent and socialist country, such as the establishment of cooperatives.[2335]

741. At this time, and throughout the DK era, Zone and Autonomous Sector secretaries, who answered directly to or formed part of the organisations constituting the Party Centre, attended meetings at which the policies and plans of the Party were discussed and decided upon. Between April 1975 and December 1977, they included ROS Nhim (Northwest), SAO Phim (East), Ta Mok (Southwest), CHOU Chet (West), KOY Thuon (Central (old North) Zone, until 1975), KE Pauk (Central (old North) Zone, from 1975), CHANN Sam (North Zone, from its establishment around 1977), MEN San (Northeast),[2336] BOU Phat (Sector 103, until its incorporation into the North Zone around 1977), YONG Yem (Sector 505, until 1976), and BORN Nan (Sector 505, from 1976).[2337]

742. Between 25 and 27 April 1975, KHIEU Samphan allegedly chaired a Special National Congress,[2338] which resolved that FUNK/GRUNK structures would be maintained for the time-being and emphasised that no foreign military bases would be tolerated in Cambodia. It also declared the new government's commitment to the construction of a classless society, free from exploitation, in which all would strive to

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[2334] ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (From 20 April 1975, ROCHOEM Ton was with POL Pot, NUON Chea, KHIEU Samphan, SON Sen, the Joint Leadership Committee, at the railway station. They were here for nearly one week. Zone commanders and military leaders came to meet them and they worked together every day. They then moved to the former Ministry of Finance building for more than two weeks); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 62-63, 67-68.

[2335] ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (They talked about the internal and external situation and the implementation of the Socialist revolution. POL Pot gave presentations and NUON Chea lead discussions); T. 7 May 2013 (Philip SHORT), pp. 4-7 (Decisions were taken in May 1975 determining that the Front was no longer useful); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 67-68 (IENG Sary, KHIEU Samphan, NUON Chea, SON Sen, POL Pot, KOY Thuon, VORN Vet, Ta Mok, SAO Phim and others regularly met), 70-71 (Among other topics, they discussed the socialist revolution, building and defending the country and building cooperatives).

[2336] Section 5: Administrative Structures, para. 220.

[2337] Section 11: Movement of the Population, para. 607.

[2338] The Chamber is not satisfied that the Congress actually took place (Section 8: Roles and Functions – Khieu Samphan, para. 377).

build and defend the country.[2339] Although the Chamber has not been convinced on the evidence that this Congress in fact took place, the Chamber is satisfied that the reported resolution, which closely resembled the DK Constitution,[2340] represented the political line decided by the CPK.

743. Over the course of about 10 days in May 1975, POL Pot, NUON Chea, KHIEU Samphan and others, including representatives from all Zones, met at the Silver Pagoda, where reasons justifying the evacuations of the cities were provided and priority was given to the need to rapidly build and defend the country through the creation of cooperatives and the construction of dams and canals.[2341] Thereafter, between approximately 20 and 25 May 1975, NUON Chea, POL Pot, KHIEU Samphan, IENG Thirith, SON Sen and others attended at least one meeting either at the Olympic Stadium or the Khmer-Soviet Technical Institute. NUON Chea, POL Pot and others instructed representatives from all military units and all District, Sector and Zone secretaries on the organisation of cooperatives, elimination of private property, prohibition of currency and markets, and building of dams and canals.[2342]

[2339] POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 2, ERN (En) 00750098 (Special National Congress in late April 1975 noted that workers and peasants carried out the revolution and should reap the rewards. The desire was to build society free from class and exploitation in which everyone strives to increase production and defend the country); *Cambodia Holds Special Congress* (The Guardian), E3/3722, 21 May 1975, p. 1, ERN (En) S 00003467 (The Special National Congress attendees unanimously adopted a statement which emphasised the important role of the peasants and the elimination of classes).

[2340] French Ministry of Foreign Affairs, Subject: Cambodia, One Year Later, E3/2657, 26 April 1976, p. 5, ERN (En) 00525795 (The new constitution closely resembled the resolution passed by the Special Congress of April 1975); French Foreign Ministry Telegram, Subject: Cambodia (in Advance of Franco-Soviet Consultations), E3/2668, 3 March 1976, p. 2, ERN (En) 00503982 (Constitution was strongly redolent of the platform adopted by the special national congress in April 1975).

[2341] T. 29 May 2013 (KHIEU Samphan), pp. 20-21 (The Central Committee met in April or May at the Silver Pagoda. POL Pot announced the commencement of the socialist revolution and indicated the end of the united front. Land was to become collective property and dams and canals had to be built quickly); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 9, ERN (En) 00156749 (During a meeting at the Silver Pagoda, explanations for the evacuation of Phnom Penh were given); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 69-71 (For about ten days in May 1975 at the Silver Pagoda, Zone leaders attended study sessions. POL Pot and NUON Chea lead the meetings, summarising the situation and outlining plans for the socialist revolution including building and defending the country and establishing cooperatives).

[2342] T. 6 June 2012 (SAO Sarun), pp. 24-25, 27-28, 30-35, 44-46, 57-58, 60-61 (Witness was present at a meeting lasting three days in Phnom Penh; he cannot recall the exact days, but it was not long after the liberation of Phnom Penh, it was around 10 days after 17 April 1975. He was instructed to attend by the Sector. There were people from all over the country representing the Sectors, as well as the military. POL Pot and NUON Chea lectured that the country had been liberated and the people had to be led to farm rice so that starvation could be avoided. They discussed political matters, the organization of cooperatives, the prohibition of currency, the closing of the markets, private property,

744. Between June and August 1975, all leaders were in Phnom Penh, organising and setting up their respective ministries and offices.[2343] These offices and ministries acted under the direction of the Standing Committee.[2344] With essential offices and ministries in place, the Party leadership accelerated the pace of its efforts to build and defend the country, and advance the class struggle.[2345]

745. Beginning around August 1975, the Standing Committee, consisting of full-rights members NUON Chea, POL Pot, IENG Sary, SAO Phim, Ta Mok VORN Vet (either a full-rights or candidate member) and SON Sen (a candidate or alternate member only), would meet about once a week, and more frequently in times of emergency.[2346] KHIEU Samphan also attended Standing Committee meetings on a regular basis.[2347] In late August 1975, the Standing Committee visited Battambang and Pursat Provinces (Northwest Zone) receiving and assessing reports in the various

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building irrigation systems and the closing of monasteries); SAO Sarun Interview Record, E3/367, 17 December 2008, p. 3, ERN (En) 00278694 (NUON Chea and POL Pot were the presenters at the opening sessions of a meeting held at the Cambodian-Soviet Friendship school around four to 10 days after 17 April 1975); SAO Sarun Interview Record, E3/384, 30 June 2009, p. 5, ERN (En) 00348375 (Setting up cooperatives); T. 12 December 2012 (KHAM Phan), pp. 35-37 (In May 1975, there was a rally outside the Olympic Stadium involving tens of thousands of participants from all over the country); T. 11 December 2012 (KHAM Phan), pp. 93-94 (KHAM Phan's father attended meetings at the time of Khmer New Year and in May 1975 in Phnom Penh); CHEA Sim Interview by Stephen HEDER, E3/1568, 3 December 1991, ERN (En) 00651865-67 (There was a national meeting in Phnom Penh on 20 May 1975 with secretaries of every District, region and Zone. The meeting lasted 5 days. NUON Chea spoke on the first day; POL Pot spoke on the second. The agenda of the meeting included the party line and the principles of building socialism in DK. In 10-15 years, the Party planned to modernise agriculture by means of scientific methods, by preparing irrigation dams and canals, and to modernise industry. POL Pot and NUON Chea spoke about eight points including the creation of cooperatives, the closing of markets and the abolition of money); HENG Samrin Interview by Stephen HEDER, E3/1568, 2 December 1991, ERN (En) 00651880 (On 20 May 1975, there was a meeting at the Olympic Stadium to receive a plan from the Centre for the whole country, attended by both military and civilian officials. The plan concerned the evacuation of people and the non-circulation of money).

[2343] IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, ERN (En) 00342500 (In July 1975, the workers and ministries returned to Phnom Penh); IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 6, ERN (En) 00442666 (IENG Sary had three tasks: set up the Foreign Ministry; organize and clean up houses of those evacuated so that those living in Phnom Penh would have proper accommodation; and maintain the best possible relations with China); *see also*, U.S. State Department Telegram, Subject: Announcement of Two New Vice Premiers in Cambodia, E3/3348, 14 August 1975, p. 1, ERN (En) 00413713 (On 13 August 1975, IENG Sary was announced as Vice Premier in charge of Foreign Affairs and SON Sen as Vice Premier in charge of National Defence).

[2344] Section 5: Administrative Structures, para. 237.

[2345] IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, pp. 1-2, ERN (En) 00442661-2 (The fast revolution was the idea from the beginning, but it was at the end of 1975 that the Party leadership decided to carry out a "really fast communization" to make it impossible for the Vietnamese to take Cambodia); DK Document: Concerning the Grasp and Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, pp. 2-3, ERN (En) 00244275-6.

[2346] Section 5: Administrative Structures, para. 203.

[2347] Section 8: Roles and Functions – Khieu Samphan, para. 386.

Sectors concerning the situation of the people, enemies, military, agriculture, and industry.[2348] Thereafter, the Standing Committee decided to transfer between 400,000 and 500,000 people to Battambang and Pursat (Northwest Zone). Noting that "horrible elements" existed among the 'New People', the Standing Committee considered that the cooperatives were meant to "absorb" the 'New People' and ordered continued "vigilance" against "no-good elements".

746. The report concerning the Standing Committee's visit to the Northwest Zone does not indicate who attended. The Chamber notes however that NUON Chea was present in Cambodia in late August 1975, had ultimate decision-making authority, was a long-standing member of the Standing Committee, and played a central and ongoing role in the development of Party policy.[2349] Although there is no evidence that NUON Chea travelled with other members of the Standing Committee to the Northwest Zone in August 1975, the Chamber is satisfied that at the least he participated in developing and deciding upon the plans and policies reflected in the Standing Committee Report which followed this visit.

747. On the other hand, KHIEU Samphan was traveling to China and North Korea in late August 1975 when the Standing Committee visited the Northwest Zone.[2350] There is no evidence that he took part directly in the planning that culminated in decisions issued in late August 1975. However, considering his economic authority, regular attendance at Standing Committee meetings and other organs of the Party Centre, and ongoing participation in developing Party policy throughout the democratic and socialist revolutions, the Chamber is satisfied that soon after his return to Cambodia he was notified of the visit, the observations made and the plans made by the Standing Committee in late August 1975.

748. A September 1975 policy document addressed the importance of stimulating "mass movement in implementing the agricultural line of the party" and stressed that in some places where people were assembled, "they have actively produced food day and night, not thinking of the rain or the wind." It also noted that people were

[2348] Standing Committee Report, E3/216, 20-24 August 1975, p. 1, ERN (En) 00850973; *see also*, Section 11: Movement of the Population (Phase Two), para. 585.
[2349] Section 7: Roles and Functions – Nuon Chea, paras 313-317, 348.
[2350] *See* Section 14: Joint Criminal Enterprise, para. 758.

"striving and working hard, fifteen hours a day" and that this was "having an impact on their health." The document clearly identifies and underlines the need to build dams, dikes and canals, including in large groups and by hand while awaiting machinery or tools to become available; the three tonnes per hectare production target; the need to export rice to raise capital; the shortages of medicine and food, especially affecting the 'New People'; the planned re-location to Battambang and Pursat (Northwest Zone), Preah Vihear (Sector 103) and Kampong Thom (Central (old North) Zone); the involvement of the Commerce Committee in planning the movement of hundreds of thousands; and the need to reward the 'Old People', as the 'New People' could not be "guaranteed".[2351] This document does not name its authors or those responsible for the plans and policies it sets out, and nor does it address when these plans and policies were decided.

749. However, the document's stated purpose was to examine implementation of the party line to build the country. It also provided further particulars and instructions as to population movements and conditions in the countryside.[2352] According to KHIEU Samphan, the Central Committee's general purpose was to conduct such analysis and issue such instructions.[2353] IENG Sary confirmed that he was present at a September 1975 meeting of Party leaders, including KHIEU Samphan, POL Pot, NUON Chea, SAO Phim, SON Sen, Ta Mok, VORN Vet, ROS Nhim, KOY Thuon and a number of military commanders, at which defence, agriculture, "the water problem" and industry were discussed.[2354] Expert Philip SHORT also wrote of a mid-September Central Committee meeting addressing agriculture, social affairs and defence matters,

[2351] Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparation to Build the Country in Every Sector, E3/781, September 1975, pp. 1-22, ERN (En) 00523569-90 (*see in particular*, ERN 00523571, 00523573, 00523576, 00523590); *see also*, Section 11: Movement of the Population (Phase Two), paras 604-609.

[2352] Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparation to Build the Country in Every Sector, E3/781, September 1975, pp. 1-22, ERN (En) 00523569-90.

[2353] Section 8: Roles and Functions – Khieu Samphan, para. 384 (The Central Committee met to discuss implementation of Standing Committee policies, issue directives to correct "abuses" and improve conditions in the countryside).

[2354] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 2-5, ERN (En) 00417600-03; T. 15 July 2013 (Stephen HEDER), pp. 63-64 (HEDER confirmed the accuracy of the written record of interview E3/89); *see also*, Section 11: Movement of the Population (Phase Two), para. 604 (fn. 1875).

although his source for this statement is unclear.[2355] Further, the October-November 1975 issue of *Revolutionary Flag* indicates that the "Centre Party Congress" had already unanimously decided upon the three tonnes per hectare before November 1975,[2356] a production target specifically mentioned in the September 1975 policy document. Finally, Expert David CHANDLER explained that the overall economic plan which emerged in late 1975 and led to movements between rural areas, particularly in early 1976, was a product of the collective leadership of the Centre, "centred at some point in the Central Committee".[2357] The Chamber is therefore satisfied that there was a meeting of the Party leadership in early September 1975 concerning the economic policies later reflected in the September 1975 policy document. Noting his central decision-making role throughout the DK era and long-standing membership of the Standing and Central Committees,[2358] the Chamber finds that NUON Chea was present at this meeting.

750. In relation to KHIEU Samphan's presence, the Chamber notes that he had returned to Cambodia from a trip to China and North Korea by 9 September 1975.[2359] IENG Sary himself claimed that he attended this meeting. As he was reported to be attending a reception in New York the evening of 6 September 1975, even had he left the next day, he would not have arrived in Cambodia until 8 September 1975.[2360] The Chamber also notes that IENG Sary was reported as being in Paris by, at the latest, by 17 September 1975.[2361] Therefore, the Chamber is satisfied that the meeting would have taken place between 8 September 1975 at the earliest and 17 September 1975 at the latest. Accordingly, the Chamber is unable to conclude with absolute certainty that the meeting took place after KHIEU Samphan returned to Cambodia on 9 September 1975 and that he had the opportunity to attend.

751. However, the Chamber recalls its findings concerning KHIEU Samphan's

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[2355] Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 305-8, ERN (En) 00396513-16.
[2356] *Revolutionary Flag*, E3/748, Oct-Nov 1975, pp. 9-17, ERN (En) 00495808-16.
[2357] T. 19 July 2012 (David CHANDLER), pp. 88-89, 95-96.
[2358] Section 7: Roles and Functions – Nuon Chea, paras 313-316, 348.
[2359] *See* Section 14: Joint Criminal Enterprise, para. 758.
[2360] *See e.g. Indochinese Welcomed* (The Guardian), E3/3729, 17 September 1975, p. 1, ERN (En) S 00003649 (IENG Sary attended a reception on the evening of 6 September 1975).
[2361] *See e.g. Mr. IENG Sary Ends Private Visit to Paris* (AFP), E3/3302, 18 September 1975, p. 1, ERN (En) 00710325 (IENG Sary was scheduled to leave Paris on 17 September 1975).

education and experience in economics, as well as the important economic role he played throughout the DK era.[2362] Indeed, KHIEU Samphan explained to the Chamber that he was generally invited to attend meetings of the Centre concerning development of the country.[2363] The Chamber has already found that he attended meetings in June 1974 where urban evacuations were discussed, as well as in late April and May 1975 where other economic policies, including the establishment of cooperatives, were addressed.[2364] The Chamber therefore finds that KHIEU Samphan, a candidate member of the Central Committee in September 1975, did take part in the development of the plans reflected in the September 1975 policy document.

752. On 9 October 1975, the Standing Committee confirmed and assigned responsibilities to KHIEU Samphan (commerce, accounting and pricing, liaising with FUNK/GRUNK), NUON Chea (party affairs, social action, culture, propaganda and education, including training sessions and recruitment), IENG Sary (foreign affairs), POL Pot (general responsibility over the military and the economy), KOY Thuon (domestic and international commerce), SON Sen (Army General Staff and security), VORN Vet (industry, railroads and fisheries), IENG Thirith (culture, social action and foreign affairs) and YUN Yat (propaganda and education).[2365] The Standing Committee also affirmed that the general line was to build and defend the country, and to organize the force of the masses.[2366]

753. The October-November 1975 issue of *Revolutionary Flag* magazine reported that the First Nationwide Economics Congress, attended by "economic cadres", mandated that all would labour to rapidly build and defend the country, achieving a modern agricultural economy within 10-15 years; confirmed the 1976 production target of three tonnes per hectare; determined that struggle against the imperialists and "their lackeys" remained necessary; encouraged the advancement of the class struggle and the expansion of cooperatives; and instructed that all manpower should be

[2362] Section 8: Roles and Functions – Khieu Samphan, paras 351-355, 400, 406-407.
[2363] T. 29 May 2013 (KHIEU Samphan), pp. 87-88.
[2364] *See* Section 3: Historical Background, paras 142, 145-147; Section 14: Joint Criminal Enterprise, paras 735, 740-741, 743.
[2365] Section 5: Administrative Structures, para. 232.
[2366] Standing Committee Minutes, E3/182, 9 October 1975, p. 13, ERN (En) 00183405; *see also*, Section 11: Movement of the Population (Phase Two), para. 604.

organised for consecutive projects on a seasonal basis.[2367] While there is no evidence other than an issue of *Revolutionary Flag* indicating that this Congress actually took place, the Chamber notes that the magazine explained that the plans and policies concerning the production target of three tonnes per hectare adopted during the alleged Congress had been decided upon and endorsed by the "Centre Party Congress".[2368] The Chamber also considers that the resolution of the First Nationwide Economics Congress on this matter closely reflects the contents of the September 1975 policy document. Considering its findings above concerning the series of meetings beginning, at the latest, in May 1975 and continuing until late 1975, the Chamber is satisfied that resolution later published as a result of this alleged First Nationwide Economics Congress represented the policy adopted by the Party leadership and KHIEU Samphan.

14.1.4.2. *Codifying the Party Line*

754. On 14 December 1975, KHIEU Samphan allegedly chaired a National Congress at which he was reported to have presented the new DK constitution. KHIEU Samphan's reported speech emphasised, among other things, that all people could work collectively either in the factories or fields.[2369] The DK Constitution, which resembled the resolution of the Special National Congress reportedly held in April 1975,[2370] codified the party line guaranteeing a classless society in which the people would strive to increase agricultural production, and eventually industry, for the construction and defence of the country. All policies were based on the principles of self-reliance, independence and collectivisation. The DK Constitution also called for the election of a National Assembly to appoint the State Presidium and

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[2367] *Revolutionary Flag*, E3/748, Oct-Nov 1975, pp. 9-17, ERN (En) 00495808-16; *see also*, Section 11: Movement of the Population (Phase Two), para. 604.

[2368] *Revolutionary Flag*, E3/748, Oct-Nov 1975, pp. 9-17, ERN (En) 00495808-16 (Indicating further that the "Centre Party Congress" had already unanimously decided on the three tonnes per hectare target before the First Nationwide Economic Congress in early November 1975 and that the resolution of the First Nationwide Economic Congress was also adopted by the "Centre Party").

[2369] *National Congress Held; New Constitution Adopted* (in FBIS Collection), E3/1356, 15 December 1975, pp. 9-10, ERN (En) 00167574-5; *KHIEU Samphan Report*, E3/273, 5 January 1976, pp. 13-14, ERN (En) 00167810-7.

[2370] French Ministry of Foreign Affairs, Subject: Cambodia, One Year Later, E3/2657, 26 April 1976, p. 2, ERN (En) 00525792, p. 5, ERN (En) 00525795; French Foreign Ministry Telegram, Subject: Cambodia (in Advance of Franco-Soviet Consultations), E3/2668, 3 March 1976, p. 2, ERN (En) 00503982.

government which would replace GRUNK.[2371]

755. At the CPK's Fourth Party Congress in January 1976,[2372] the Party leadership appointed KHIEU Samphan a full rights member of the Central Committee[2373] and adopted a slightly amended statute. This statute declared that the CPK was the supreme organisation in Cambodia, commanding all work in the socialist revolution.[2374] Any party member or party echelon which opposed the Party's organizational stances violated Party discipline and was subject to sanctions, including removal from duties and rejection from the Party.[2375] The Statute affirmed the need for class struggle, democratic centralism, vigilance against enemies and commitment to the principle of self-reliance.[2376] The political line codified in the DK Constitution and Party Statute was echoed in the CPK Youth League Statute, also

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[2371] DK Constitution, E3/259, 5 January 1976, p. 2, ERN (En) 00184834 (Preamble: non-aligned, independent, sovereign; without rich or poor and without exploiter or exploited; in which people join together to do manual labour and increase production for the construction and defence of the country; Chapter One, Art. 1: DK is independent, non-aligned and sovereign; DK is a state of people, workers, peasants and labourers; Chapter Two, Art. 2: general means of production are the collective property of the people's state and the common property of the people's collectives), p. 3, ERN (En) 00184835 (Chapter Three, Art. 3: culture of DK to serve the tasks of defending and building country; culture absolutely opposed to that of the oppressive classes, colonialism and imperialism; Chapter Four, Art. 4: DK applies the collective principle in leadership and work), p. 5, ERN (En) 00184837 (Chapter Nine, Art. 14: duty of all to defend and build the country together in accordance with individual ability and potential; Chapter Twelve, Art. 17: national emblem has series of dikes and canals symbolizing modern agriculture and factories which symbolise industry), p. 6, ERN (En) 00184838 (Chapter Sixteen, Art. 21: DK foreign policy was based on independence, neutrality, non-alignment and peace; opposed to all forms of outside interference in internal affairs, as well as all forms of subversion and aggressions against DK).

[2372] Section 5: Administrative Structures, para. 200.

[2373] Section 5: Administrative Structures, para. 202; Section 8: Roles and Functions – Khieu Samphan, para. 363.

[2374] CPK Statute, E3/130, p. 3, ERN (En) 00184024 (After the Party led and achieved national democratic revolution, the Party continued to lead socialist revolution and construct socialism in an absolute monopoly in every Sector. The CPK was the supreme commander governing and administering all revolutionary work), p. 24, ERN (En) 00184045 (Article 23 provides that the tasks of the Central Committee include instructing all Zones and Sectors to carry out activities according to the Party's political lines and stances in accordance with national defence).

[2375] CPK Statute, E3/130, p. 12, ERN (En) 00184033 (Article 4 Party Discipline).

[2376] CPK Statute, E3/130, p. 4, ERN (En) 00184025 (The Party had strong proletarian world views and struggled against non-proletarian views and opposes revolutions of petty bourgeoisie, capitalists, feudalists, imperialists and reactionaries. Established according to the principle of democratic centralism: opposed dissent and creation of cliques. The Party had high-level revolutionary vigilance toward all enemy activities and trickery, direct or indirect, over or secret, which had the intent to destroy the party), p. 5, ERN (En) 00184026 (The CPK clung to principles of independence, mastery, self-reliance, self-determination and revolutionizing oneself by oneself), p. 6, ERN (En) 00184027 (Members must be of a good class pedigree and clear personal history), p. 15, ERN (En) 00184036 (Leaders must be committed to self-reliance, must have good class origins and be committed to the working class stance).

adopted in early 1976.[2377]

14.1.4.3. *Dissolution of GRUNK*

756. After 17 April 1975 and before a new government could be inaugurated,[2378] the Party leadership had to decide the fate of various suspect FUNK/GRUNK officials, in particular NORODOM Sihanouk, PENN Nouth and others loyal to them.

757. The Party leadership had been warned by Chinese authorities that any rift between NORODOM Sihanouk and the Khmer Rouge would open the door to foreign intervention in Cambodia.[2379] NORODOM Sihanouk remained popular internationally and with the people of Cambodia.[2380] However, the Party leadership considered that if left abroad, NORODOM Sihanouk, PENN Nouth and their loyalists could not be controlled and might pose a threat to the socialist revolution.[2381] Accordingly, KHIEU Samphan announced, in August 1975, that GRUNK diplomats who assisted the resistance abroad would be recalled to spend a year in the countryside before being

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[2377] CPK Youth League Statute, E3/1607, January 1976, p. 4, ERN (En) 00574536 (Now that the revolution was finally and totally completed, the socialist revolution must be continued and built until communism was attained. CYLK was against the world view of the non-proletariat, including capitalists, feudalists and imperialists. CYLK applied democratic centralism and adhered to the stance of self-reliance).

[2378] Section 5: Administrative Structures, paras 229-230.

[2379] French Foreign Ministry Telegram, Subject: Cambodia, E3/2667, 28 August 1975, p. 1, ERN (En) 00503978 (Chinese Prime Minister, Chou En Lai, warned KHIEU Samphan and NORODOM Sihanouk that a rift between Sihanouk loyalists and the Khmer Rouge would open the door to foreign intervention).

[2380] French Foreign Ministry Memorandum, Subject: Cambodian Review (January 1976), E3/490, 8 May 1976, p. 5, ERN (En) 00610822 (The people continued to hold NORODOM Sihanouk in high esteem); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, p. 8, ERN (En) 00517769 (Refugee Gen. SOR Buon explained that many in the country were hopeful that NORODOM Sihanouk would return "to drive out the demons"); U.S. National Security Council Memorandum, Subject: Indochina Assessment, E3/3471, 26 September 1975, p. 3, ERN (En) 00443136 (In order to capitalise on NORODOM Sihanouk's standing in the third world, and possibly out of deference to Sihanouk's Chinese patrons, the Khmer Rouge were probably prepared to accept a token non-Communist role in their government for an indefinite period); U.S. State Department Telegram, Subject: Emergence of Khmer Insurgent Leader Khieu Samphan on the International Scene, E3/3310, 25 April 1974, p. 4, ERN (En) 00412742 (Getting rid of NORODOM Sihanouk could cost the Khmer Rouge international support, including African moderates who believed NORODOM Sihanouk was a patriotic neutralist overthrown by a military junta in 1970); U.S. State Department Telegram, Subject: French Reports Concerning Cambodia, E3/3318, 8 May 1974, p. 4, ERN (En) 00412776 (Certain reserve on part of Algerians towards KHIEU Samphan indicated that they wanted to conserve the number one role for NORODOM Sihanouk).

[2381] DK Document: Concerning the Grasp and Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, pp. 2-4, ERN (En) 00244275-7.

given new appointments.[2382] On 2 November 1975, the Standing Committee, at a meeting attended by POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen, Doeun, KHIEU Samphan and others, decided that NORODOM Phurissara, a GRUNK minister deemed loyal to NORODOM Sihanouk, could not be trusted and action against him was therefore necessary.[2383] Former GRUNK ministers loyal to NORODOM Sihanouk and/or recalled from overseas, including NORODOM Phurissara, were later re-educated at Boeng Trabek, some disappearing.[2384] KHIEU Samphan conducted political indoctrination sessions of returned intellectuals and officials in late 1975 and 1976 at K-15. During these sessions, he justified urban evacuations which he claimed had destroyed private property and prevented starvation and lectured that knowledge originating from education by the colonialists and imperialists had to be destroyed.[2385]

758. In mid-August 1975, a delegation, headed by KHIEU Samphan and including IENG Sary (now Deputy Prime Minister for Foreign Affairs) and IENG Thirith, travelled to China and then North Korea to negotiate NORODOM Sihanouk's

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[2382] French Foreign Ministry Telegram, Subject: Cambodia, E3/2662, 25 August 1975, p. 3, ERN (En) 00525806; DK Document: Concerning the Grasp and Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, p. 4, ERN (En) 00244277 (Intellectuals and others returning from abroad should do labour when they first arrived to train and re-educate them); French Foreign Ministry Telegram, Subject: Cambodia, E3/2667, 28 August 1975, p. 2, ERN (En) 00503979 (KHIEU Samphan spent the better part of his time in Peking indoctrinating young Khmers living there, forewarning them that at the beginning they would have to work in the rice paddies in the countryside); T. 6 August 2012 (SUONG Sikoeun), pp. 87-92 (All diplomats abroad were called back to Phnom Penh); T. 7 August 2012 (SUONG Sikoeun), pp. 50-53 (Many leaders appealed to students and others to return to Cambodia); T. 8 August 2012 (SUONG Sikoeun), pp. 21-24 (Intellectuals were warned to prepare for hard labour upon their return).

[2383] Standing Committee Minutes, E3/227, 2 November 1975, p. 1, ERN (En) 00183409 (POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen, Doeun, KHIEU Samphan and others were present), p. 4, ERN (En) 00183412 (Phurissara and a number of other elements could not be guaranteed and "we must be really vigilant").

[2384] SISOWATH Ayravady Declaration, E3/5679, 22 October 1989, pp. 1-3, ERN (En) 00078082-3 (Including NORODOM Phurissara, SARIN Chhak (the former GRUNK Minister of Foreign Affairs based in Peking), and others); T. 6 August 2012 (SUONG Sikoeun), pp. 87-92 (Witness learned in 1979 that some of the returned diplomats had disappeared); T. 7 August 2012 (ONG Thong Hoeung), p. 105 (Some returnees disappeared and witness later learned they were executed); T. 8 August 2012 (ONG Thong Hoeung), pp. 81-86 (Many returnees were sent to Boeng Trabek where they worked and were criticised pursuant to the class struggle).

[2385] T. 7 August 2012 (ONG Thong Hoeung), p. 99; T. 7 May 2013 (Philip SHORT), pp. 17-19; ONG Thong Hoeung Interview Record, E3/97, 22 November 2008, p. 10, ERN (En) 00287106; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 149, ERN (En) 00678569; *see also*, Section 8: Roles and Functions – Khieu Samphan, para. 379.

return.[2386] On 9 September 1975, NORODOM Sihanouk returned to Phnom Penh, accompanied by KHIEU Samphan.[2387]

759. The Standing Committee assigned KHIEU Samphan to continue as the liaison between the CPK and NORODOM Sihanouk.[2388] In fulfilling this task, KHIEU Samphan accompanied NORODOM Sihanouk on visits to the countryside.[2389] KHIEU Samphan was pleased with the irrigation and agriculture projects completed with the people's bare hands and attempted to demonstrate the benefits and success of these efforts to NORODOM Sihanouk.[2390] Indeed, KHIEU Samphan was willing to help the regime in whatever way he could and refrain from doing anything that might hinder the movement.[2391] NORODOM Sihanouk refused KHIEU Samphan's

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[2386] French Ministry of Foreign Affairs Telegram, Subject: Visit to Peking by Khieu Samphan and Ieng Sary, E3/2717, 14 August 1975, pp. 1-2, ERN (En) 00738338-9; French Ministry of Foreign Affairs Telegram, Subject: Visit to China by Khieu Samphan and Ieng Sary, E3/2721, 18 August 1975, p. 2, ERN (En) 00651627; U.S. State Department Telegram, Subject: KHIEU Samphan Visit to PRC, E3/619, 16 August 1975, p. 1, ERN (En) 00413732; U.S. State Department Telegram, Subject: Khieu Samphan leaves for North Korea, E3/3350, 19 August 1975, p. 1, ERN (En) 00413736; *see also*, Section 6: Communication Structure, para. 291; Section 8: Roles and Functions – Khieu Samphan, para. 374.

[2387] U.S. State Department Telegram, Subject: September 10 EA Press Summary, E3/3355, 10 September 1975, p. 5, ERN (En) 00413798.

[2388] KHIEU Samphan Interview Transcript, E3/3196, undated, p. 9, ERN (En) 00815872 (KHIEU Samphan was assigned by the Standing Committee to communicate with NORODOM Sihanouk on behalf of the party); Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; *see also*, Section 8: Roles and Functions – Khieu Samphan, para. 365.

[2389] Section 8: Roles and Functions – Khieu Samphan, paras 368, 380.

[2390] KHIEU Samphan Interview Transcript, E3/3196, undated, p. 8, ERN (En) 00815871 (KHIEU Samphan felt confused before the evacuation but after 17 April, after the evacuation, he saw ditches and dikes and he was very satisfied. When KHIEU Samphan accompanied NORODOM Sihanoukto see the ditches and dikes in the country, he was pleased to tell NORODOM Sihanouk that they built them with their own hands. KHIEU Samphan believed that the CPK had firm solidarity and he saw big dams rise and smooth rice paddies); KHIEU Samphan Interview Transcript, E3/3198, undated, p. 15, ERN (En) 00815890 (KHIEU Samphan visited rural areas with NORODOM Sihanouk during the DK era and saw people building dams such as those at Kamping Puoy, west of Battambang. When KHIEU Samphan saw dams, ditches and rice fields, he felt excited and delighted. He thought Cambodia would no longer be called a country with poor agriculture, but instead would have sufficient rice. He believed the people evacuated from Phnom Penh would also understand as he did), p. 16, ERN (En) 00815891 (When KHIEU Samphan accompanied NORODOM Sihanouk to visit dams and ditches in rural areas and saw people working with their hands and feet, he tried to explain to NORODOM Sihanouk that the meaning of this work was enormous because they were rebuilding and protecting the country. He wanted NORODOM Sihanouk to understand that it was necessary to develop the country. KHIEU Samphan saw many big dams emerging rapidly).

[2391] Book by KHIEU. S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 114, ERN (En) 00103780 (KHIEU Samphan saw some of the achievement between 1975 and 1979, especially irrigation in countryside. Thanks to reservoirs in Trapeang Thmar in Phnom Srok and Kamping Puoy in Battambang, there were rice fields as far as the eye could see. The confidence the regime gained from its victory, inspired him to want to help in whatever way he could and to refrain from doing anything might hinder the movement's efforts).

overtures, affirming his previously expressed desire to resign as head of state.[2392]

760. On 13 March 1976, POL Pot, KHIEU Samphan, NUON Chea, IENG Sary, VORN Vet, SON Sen and Doeun attended a meeting at which the Standing Committee decided to accept NORODOM Sihanouk's resignation and thereby end "feudalism" in Cambodia.[2393] This decision was confirmed by the Central Committee on 30 March 1976.[2394]

761. On 2 April 1976, NORODOM Sihanouk publicly handed in his resignation and on 4 April 1976, it was accepted by the government.[2395] KHIEU Samphan announced the retirement of NORODOM Sihanouk on the radio.[2396] On 6 April 1976, PENN Nouth handed in the resignation of his government, GRUNK.[2397]

762. The terms of NORODOM's Sihanouk's retirement had already been decided at a Standing Committee meeting on 11 March 1976. After hearing KHIEU Samphan's report on NORODOM Sihanouk's decision to resign, POL Pot summarised these terms: NORODOM Sihanouk was not authorised to leave the country, a wire should be sent to his children asking them to return immediately to Cambodia so that the problem could be resolved "cleanly", and meetings between NORODOM Sihanouk and foreign diplomats should cease immediately.[2398] Nevertheless, PENN Nouth and NORODOM Sihanouk remained useful tools of the Khmer Rouge,[2399] visiting the countryside to boost the morale of the people and publicly expressing their support for

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[2392] Standing Committee Minutes, E3/197, 11 March 1976, p. 3, ERN (En) 00182640.
[2393] Standing Committee Minutes, E3/197, 11 March 1976, p. 4, ERN (En) 00182641.
[2394] Central Committee Decision, E3/12, 30 March 1976, p. 5, ERN (En) 00182813 (The Central Committee decided to retire NORODOM Sihanouk, in accordance with his request, as he could not move forward).
[2395] French Foreign Ministry Memo, Subject: Cambodian Review (April 1976), E3/490, 14 May 1976, p. 16, ERN (En) 00610833.
[2396] *KHIEU Samphan Reads Government Reply* (in FBIS Collection), E3/275, 5 April 1976, ERN (En) 00167605.
[2397] French Foreign Ministry Memo, Subject: Cambodian Review (April 1976), E3/490, 14 May 1976, p. 17, ERN (En) 00610834.
[2398] Standing Committee Minutes, E3/197, 11 March 1976, pp. 3-5, ERN (En) 00182640-2 (Describing NORODOM Sihanouk as a tame tiger, waiting for the day of his death. In the meantime, the Standing Committee decided to maintain him as a dignitary, but would end it if he kept struggling for himself).
[2399] Standing Committee Minutes, E3/197, 11 March 1976, p. 3, ERN (En) 00182640 (The Standing Committee acknowledged that NORODOM Sihanouk was beneficial, particularly on the international stage).

the Khmer Rouge regime.[2400]

14.1.4.4. *Democratic Kampuchea*

763. On 3 February 1976, HU Nim announced the election of the People's Representative Assembly ("PRA") to be held on 20 March 1976.[2401] On 8 March 1976, POL Pot, NUON Chea, KHIEU Samphan and Doeun attended two Standing Committee meetings concerning the upcoming PRA elections. POL Pot declared that the PRA would be "worthless".[2402] However, its election was deemed necessary. The Central Committee considered that the country's international reputation would improve after the world had the opportunity to observe its constitution and elections.[2403]

764. Following the 20 March 1976 elections, the PRA was elected for a five year term and tasked to designate the State Presidium, government and Court of Justice during its first session.[2404] On 30 March 1976, before the first PRA session, the Central Committee declared that the government was an organisation subordinate to

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[2400] *See e.g. What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 3, ERN (En) 00185420 (NORODOM Sihanouk occupied the palace after resigning. IENG Sary explained that it was in his interest and that of the DK that he remain in Cambodia); French Foreign Ministry Telegram, Subject: Anniversary of the Liberation of Kampuchea: Messages from Prince Sihanouk and Penn Nouth, E3/2733, 19 April 1978, p. 1, ERN (En) 00743318 (NORODOM Sihanouk and PENN Nouth both sent letters on the third anniversary of the liberation of Phnom Penh expressing their continued support for the current regime); *Letter from Samdech Norodom Sihanuk to The Communist Party of Kampuchea Central Committee*, E3/169, 13 April 1978, ERN (En) S00854120-122; French Foreign Ministry Memorandum, Subject: Cambodian Review (January 1976), E3/490, 8 May 1976, p. 5, ERN (En) 00610822 (From 15-17 January 1976, NORODOM Sihanouk traveled to visit flood dikes under construction, a rubber plantation and factory in the northern provinces. This was his second trip to engage with the people who still held him in high esteem), p. 10, ERN (En) 00610827 (Faced with accounts of human rights violations, from 20 February to 5 March 1976, DK welcomed seven diplomats from friendly countries. NORODOM Sihanouk and PENN Nouth were among the welcoming party), pp. 17-18, ERN (En) 00610834-5 (NORODOM Sihanouk was declared a distinguished patriot and given an annual pension. PENN Nouth was also given an honorific and appointed as advisor to the State Presidium); OTAN Memorandum, Subject: Recent Political Developments in Cambodia, E3/493, 28 October 1977, p. 5, ERN (En) 00700578 (The Party broadcast interviews with PENN Nouth in September 1977 and read out letters written in support of DK by NORODOM Sihanouk in late October 1977).

[2401] French Foreign Ministry Memo, Subject: Cambodian Review (February 1976), E3/490, 11 May 1976, p. 7, ERN (En) 00610824.

[2402] Standing Committee Minutes, E3/232, 8 March 1976, p. 3, ERN (En) 00182630 ("If anyone asks, we must explain, not be wild and disorderly, do not let it be seen that we want to suppress. At the same time, do not speak playfully about the Assembly in front of the people to let them see that we are deceptive, and our Assembly is worthless"); *see also*, Standing Committee Minutes, E3/231, 8 March 1976, pp. 1-2, ERN (En) 00183360-1.

[2403] Central Committee Decision, E3/12, 30 March 1976, p. 5, ERN (En) 00182813.

[2404] Section 5: Administrative Structures, para. 235; Section 7: Roles and Functions – Nuon Chea, paras 319-320.

the Party and appointed some members of the new government.[2405] The Central Committee also decided which Zone and Centre organs would have the power to "smash" both inside and outside the Party ranks; established a regime of weekly reporting to Office 870 on matters related to the goal of three tonnes per hectare; affirmed that the goal of the revolution was to put power in the hands of the peasants; and announced that model Districts which achieved three tonnes per hectare and had arranged their labour force "well and properly" would be rewarded with the presentation of an honorary flag with the inscription "great leap forward."[2406] The Central Committee designated holidays and celebrations, including the Independence Day celebrations (15-17 April) intended to attack imperialism, highlight the resulting sacrifices made by the people, praise the revolutionary army and "incit[e] resolution to build and defend the country in a great miraculous leap".[2407]

765. KHIEU Samphan, NUON Chea, POL Pot, IENG Thirith and other leaders attended the first session of the PRA held from 11 to 13 April 1976. KHIEU Samphan gave the inaugural speech on 11 April 1976 claiming that fair and honest elections had been held and endorsing policies regarding work-sites, cooperatives and the ongoing class struggle.[2408] The Chamber has already found that the elections were a façade, like the Assembly they would elect.[2409]

766. The PRA then formally appointed the new government: KHIEU Samphan became president and SAO Phim and ROS Nhim were appointed vice-presidents in the State Presidium.[2410] KHIEU Samphan later explained that he accepted the presidency due to a sense of patriotic duty: he did not want to weaken the movement.[2411] POL Pot was appointed prime minister; NUON Chea, Chairman of the

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[2405] Section 5: Administrative Structures, paras 233-236.
[2406] Central Committee Decision, E3/12, 30 March 1976, pp. 1-2, 4, ERN (En) 00182809-10, 00182812; *see also,* Section 3: Historical Background, para. 117.
[2407] Central Committee Decision, E3/12, 30 March 1976, pp. 3-4, ERN (En) 00182812-3.
[2408] DK People's Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, pp. 5-9, ERN (En) 00184052-6.
[2409] Section 5: Administrative Structures, para. 234; Section 7: Roles and Functions – Nuon Chea, para. 320.
[2410] Section 5: Administrative Structures, para. 235; Section 8: Roles and Functions – Khieu Samphan, para. 381.
[2411] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 68-69, ERN (En) 00103757 (He thought that if he turned down head of state, he would be failing in his patriotic duty. He did not want to see the mobilised national force the Khmer Rouge represented weakened); *see also,* T. 31 October 2013 (KHIEU Samphan Final Statement), p. 71 (He

PRA Standing Committee; IENG Sary, Deputy Prime Minister of Foreign Affairs; SON Sen, Deputy Prime Minister of National Defence; VORN Vet, Deputy Prime Minister of Economics; HU Nim, Minister of Information and Propaganda; THIOUNN Thioun, Minister of Health; IENG Thirith, Minister of Social Action; TOCH Phoeun, Minister of Public Works; and YUN Yat, Minister of Culture, Training and Education.[2412] Committees were also assigned to support the Office of the Deputy Prime Minister of Economy including Agriculture, Industry, Commerce, Communications and Rubber Plantations.[2413] The Standing Committee appointed members to these committees during a meeting held between 19 and 21 April 1976. MEY Prang was head of the Communications and Transportation Committee, overseeing the Train Unit.[2414] The Standing Committee also determined that it had to visit the bases in May 1976 to "push" early season rice production, in particular in the Northwest, Central (old North), Southwest and Siem Reap (Sector 106).[2415]

767. At the celebrations marking the anniversary of the 17 April 1975 victory, KHIEU Samphan announced the new government's resolve to defend national independence and concentrate on national reconstruction.[2416] At the first Council of Ministers meeting, on 22 April 1976, POL Pot affirmed the government's obligation to adhere to the Party line.[2417] At the second Council of Ministers meeting on 31 May 1976, POL Pot praised the achievements of the socialist revolution including the creation and expansion of cooperatives and the collection of thousands of forces at various worksites where irrigation projects were underway.[2418] POL Pot also noted weakness including shortages of food, disease and inadequate shelters, in particular for "mobile youth units"[2419] and that the "railways sector" organised movement in

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wanted the CPK to succeed in their "noble task" and he had faith and confidence in their revolutionary plan).

[2412] Section 5: Administrative Structures, para. 235; Section 7: Roles and Functions – Nuon Chea, paras 318-320.

[2413] Section 8: Roles and Functions – Khieu Samphan, para. 403.

[2414] Section 11: Movement of the Population (Phase Two), para. 578.

[2415] Standing Committee Minutes, E3/235, 19-21 April 1976, p. 6, ERN (En) 00183421.

[2416] French Foreign Ministry Memo, Subject: Cambodian Review (April 1976), E3/490, 14 May 1976, p. 19, ERN (En) 00610836; *Anniversary of 17 Apr. Victory Celebrated* (in FBIS Collection), E3/275, 15 April 1976, ERN (En) 00167630-37; *Text of IENG Sary Speech at 17 April reception* (in FBIS Collection), E3/275, 18 April 1976, ERN (En) 00167657-59; *HU Nim Announces People's Assembly Press Communique* (in FBIS Collection), E3/275, 14 April 1976, ERN (En) 00167623-26.

[2417] Section 5: Administrative Structures, para. 237.

[2418] Council of Ministers Meeting Minutes, E3/794, 31 May 1976, pp. 7-8, ERN (En) 00182677-8.

[2419] Council of Ministers Meeting Minutes, E3/794, 31 May 1976, pp. 8-9, ERN (En) 00182678-9.

cooperation with the bases in order to use resources effectively.[2420] MEY Prang later reported on transportation by train, noting prior experience with transporting large quantities of "commodities".[2421]

768. Meanwhile, the Standing Committee continued meeting concerning implementation of the Party's political line and administration of the country. Minutes of meetings held between August 1975 and June 1976,[2422] and indicating attendance of various party leaders, were put before the Chamber. The Standing Committee and at times other senior leaders who were not members of the committee including KHIEU Samphan, IENG Thirith and various Zone and Autonomous Sector secretaries, considered and decided upon matters relating to propaganda and foreign affairs;[2423] commerce and trade;[2424] national defence;[2425] and economic matters,

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[2420] Council of Ministers Meeting Minutes, E3/794, 31 May 1976, p. 10, ERN (En) 00182680.
[2421] Council of Ministers Meeting Minutes, E3/794, 31 May 1976, pp. 16-17, ERN (En) 00182686-7.
[2422] Section 7: Roles and Functions – Nuon Chea, para. 316; Section 8: Roles and Functions – Khieu Samphan, para. 386.
[2423] Standing Committee Minutes, E3/219, 3 May 1976, pp. 1-2, ERN (En) 00182663-4 (POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, VORN Vet and Touch attended a Standing Committee meeting regarding foreign policy and discussing an international conference in Algeria); Standing Committee Minutes, E3/225, 1 June 1976, pp. 1-10, ERN (En) 00182715-24 (POL Pot, NUON Chea and HU Nim attended a Standing Committee concerning propaganda and the use of film, photography, teleprinting, art performances and radio transmission).
[2424] Standing Committee Minutes, E3/233, E3/234, 13 March 1976, pp. 1-2, ERN (En) 00182649-50 (KHIEU Samphan, NUON Chea and IENG Sary attended a Standing Committee meeting concerning trade and the establishment of committees for commerce and banking. KHIEU Samphan's membership on the Purchasing Committee and chairmanship of the Banking Committee were confirmed); Standing Committee Minutes, E3/220, 7 May 1976, pp. 1-2, ERN (En) 00182706-7 (POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, Doeun and Touch attended a Standing Committee meeting concerning commerce and banking contacts with China).
[2425] Standing Committee Minutes, E3/227, 2 November 1975, pp. 1-6, ERN (En) 00183409-14 (KHIEU Samphan, NUON Chea, POL Pot, IENG Sary, VORN Vet, SON Sen, KOY Thuon, Doeun and Yem attended a Standing Committee meeting regarding border issues and salt production); Standing Committee Minutes, E3/229, 22 February 1976, pp. 1-3, ERN (En) 00182625-7 (POL Pot, KHIEU Samphan, NUON Chea, VORN Vet, Doeun, SON Sen and KOY Thuon attended a Standing Committee meeting regarding military matters and national defence); Standing Committee Minutes, E3/232, 8 March 1976, pp. 4-7, ERN (En) 00182631-34 (POL Pot, NUON Chea, KHIEU Samphan and Doeun attended a Standing Committee meeting on the prevailing enemy situations in Preah Vihear (Sector 103) and Siem Reap (Sector 106)); Standing Committee Minutes, E3/217, 11 March 1976, pp. 1-3, ERN (En) 00182635-7 (POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, VORN Vet, SON Sen, KOY Thuon and Doeun attended a Standing Committee meeting regarding problems on the eastern front); Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-7, ERN (En) 00182651-7 (KHIEU Samphan, NUON Chea, SON Sen, Ya and Doeun attended a CPK Standing Committee meeting that NUON Chea presided over regarding fighting and negotiations with Vietnam); Standing Committee Minutes, E3/221, 14 May 1976, pp. 1-13, ERN (En) 00182693-705 (POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, SON Sen, VORN Vet and Zone leaders attended a Standing Committee meeting regarding border skirmishes with Vietnam); Standing Committee Minutes, E3/222, 15 May 1976, pp. 1-2, ERN (En) 00182665-6 (KHIEU Samphan, NUON Chea, POL Pot, SON Sen and Doeun attended a Standing Committee meeting about national defence issues, including

including agricultural production and industry, and social affairs.[2426]

769. IENG Sary also claimed that the Party leadership met in 1976, deciding that people had to be separated according to their class,[2427] a policy that continued throughout the period relevant to Case 002/01.[2428] POL Pot and KHIEU Samphan both confirmed in early 1978 that the Party leadership still viewed any person originating from a class other than that of the peasants as suspect.[2429]

770. In November 1976, the Party held its Second Nationwide Economics Conference. After analysing the successes and failures in 1976, a representative of the "Party Organisation" set out the 1977 plan, including the production target of three tonnes per hectare and six tonnes in those regions that could produce both a rainy and dry season rice crop. The Party leadership intended that manpower be sent first to

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establishment of an ordinance factory and airfield); Standing Committee Minutes, E3/223, 17 May 1976, pp. 1-7, ERN (En) 00182708-14 (POL Pot, KHIEU Samphan, NUON Chea, IENG Sary and Zone leaders attended a Standing Committee meeting concerning foreign affairs); Standing Committee Minutes, E3/224, 30 May 1976, pp. 1-4, ERN (En) 00182667-70 (POL Pot, NUON Chea, KHIEU Samphan, SON Sen and VORN Vet attended a Standing Committee meeting regarding the agricultural production tasks of the army).

[2426] Standing Committee Minutes, E3/227, 2 November 1975, pp. 1-6, ERN (En) 00183409-14 (KHIEU Samphan, NUON Chea, POL Pot, IENG Sary, VORN Vet, SON Sen, KOY Thuon, Doeun and Yem attended a Standing Committee meeting regarding border issues and salt production); Standing Committee Minutes, E3/230, 22 February 1976, pp. 1-2, ERN (En) 00182546-7 (POL Pot, KHIEU Samphan, NUON Chea, IENG Sary, VORN Vet, SON Sen, KOY Thuon and Doeun attended a Standing Committee meeting addressing economic matters, such as the movement of adolescent children from the bases to Industry and pushing forward with the Kirirom Dam and food distribution.); Standing Committee Minutes, E3/232, 8 March 1976, pp. 1-7, ERN (En) 00182628-34 (POL Pot, NUON Chea, KHIEU Samphan and Doeun attended a Standing Committee meeting on base work, hearing reports on food shortages and illnesses in Sectors 103 and 106. The Standing Committee decided on the rice export goal for 1977, as well affirmed that the Sectors should allocate labour strategically according to Party goals. Sectors and Zones were also ordered to report on a weekly basis to the Standing Committee); Standing Committee Minutes, E3/224, 30 May 1976, pp. 1-4, ERN (En) 00182667-70 (POL Pot, NUON Chea, KHIEU Samphan, SON Sen and VORN Vet attended a Standing Committee meeting regarding the tasks of the army in agricultural production); Standing Committee Minutes, E3/226, 10 June 1976, pp. 1-11, ERN (En) 00183363-73 (POL Pot, NUON Chea, KHIEU Samphan, IENG Thirith and others attended a Standing Committee concerning the Ministry of Health and Social Affairs weaknesses, responsibility for production, distribution of medicines and prevention for diseases, allocation of labour, shortages of medicine and food and use of child labour).

[2427] IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 5, ERN (En) 00342504 (The decision by SAO Phim and ROS Nhim to separate people in their Zones by class was collectively accepted by the leadership in a meeting in 1976); *see also*, Section 11: Movement of the Population (Phase Two), para. 613.

[2428] Section 11: Movement of the Population (Phase Two), paras 615-623, 653.

[2429] POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, p. 5, ERN (En) S 00012703 (The genuine lower class of peasants and lower middle class were a great source for the army, the proletarian and semi-proletarian classes. Choosing fighters from other sources would ruin the army); *Phnom Penh Rally Marks 17th April Anniversary* (in SWB Collection) (excerpts of the speech delivered by KHIEU Samphan, Chairman of the State Presidium), E3/562, 16 April 1978, p. 5, ERN (En) S 00010562 (Class hatred had increased).

areas where there was sufficient water and fertile land and whenever there was manpower free, it was to be assigned to build dikes and canals. The people were to be divided according to their class, to ensure that 'New People', who could not be trusted, were assigned secondary tasks.[2430]

771. The Chamber is satisfied that the "Party Organisation" which decided upon this plan were members of the Party Centre, including members of the Standing and Central Committees.[2431] The plan analysed the successes and failures in 1976, giving instructions to correct failures and improve conditions in the countryside. According to KHIEU Samphan, such analyses and instructions were generally made by the Central Committee.[2432] Considering their responsibilities, particularly in relation to the economy,[2433] and their attendance at Standing and Central Committee meetings in 1975 and 1976 at which the 1976 plan was decided and affirmed, and elements of the 1977 plan established,[2434] the Chamber is satisfied that NUON Chea and KHIEU Sampan took part in the development of the 1977 plan which was delivered in November 1976 by a representative of the "Party Organisation".

772. In addition to attending meetings of the Centre, Zone and Autonomous Sector secretaries and officials, such as ROS Nhim, also came to Phnom Penh on a regular basis to meet with Party leaders, including NUON Chea.[2435] Party leaders, including POL Pot, KHIEU Samphan and NUON Chea, led education sessions in Phnom Penh, beginning soon after 17 April 1975 and continuing throughout the DK era. They lectured Zone, Sector and District officials, as well as ordinary cadres, about the identification and elimination of enemies, continuation of the armed struggle,

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[2430] *Revolutionary Flag*, E3/139, Nov 1976, pp. 3-27, ERN (En) 00455280-304; Section 11: Movement of the Population (Phase Two), para. 621.

[2431] T. 19 July 2012 (David CHANDLER), pp. 89, 95-96 (Referring to the 1976 plan, but indicating that generally, Party economic plans would be the product of the collective leadership of the Centre, "centred at some point in the Central Committee").

[2432] Section 8: Roles and Functions – Khieu Samphan, para. 384.

[2433] Section 7: Roles and Functions – Nuon Chea, para. 324; Section 8: Roles and Functions – Khieu Samphan, paras 400-407.

[2434] *See e.g.*, Section 14: Joint Criminal Enterprise, paras 739, 743, 745, 752; T. 29 May 2013 (KHIEU Samphan), pp. 88-89 (He was asked to participate in meetings of the Standing Committee concerning development of the country); Standing Committee Minutes, E3/232, 8 March 1976, pp. 1-7, ERN (En) 00182628-34 (POL Pot, NUON Chea, KHIEU Samphan and Doeun attended a Standing Committee meeting which decided upon on the rice export goal for 1977, as well affirmed that the Sectors should allocate labour strategically according to Party goals).

[2435] *See e.g.* T. 18 April 2012 (SAUT Toeung), p. 75 (ROS Nhim came to Phnom Penh on a "regular basis," often during Pchum Ben time, and would stay at K-1 for 10-15 days).

establishment of cooperatives, building of dikes and canals, and completion of work and production quotas.[2436]

773. Party leaders, including POL Pot, NUON Chea, KHIEU Samphan and IENG Thirith, also traveled to the Zones to observe the conduct of the socialist revolution and meet with Zone leaders and officials.[2437] According to Witness SAUT Toeung, NUON Chea would travel to Battambang to meet with ROS Nhim every three to four months.[2438] Further, several surviving telegrams from 1977-78 demonstrate that Zone secretaries and officials, such as ROS Nhim and SAO Phim, reported to Angkar or the leadership, copying POL Pot, SON Sen, VORN Vet, NUON Chea and/or Office 870, on former Khmer Republic officials and other enemy situations, and fighting on the border with Vietnam. They also asked for instructions.[2439]

[2436] T. 23 August 2012 (EM Oeun), pp. 79-85, 86-87; T. 3 July 2013 (EK Hen), pp. 40-48, 63, 78-98; T. 20 September 2012 (CHEA Say), pp. 32-37, 71; T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 75-78; T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 95-96; T. 6 May 2013 (Philip SHORT), pp. 74-75; T. 1 July 2013 (PECH Chim), p. 37; T. 8 May 2013 (Philip SHORT), p. 31; *see also*, Section 14: Joint Criminal Enterprise, para. 818.

[2437] Section 7: Roles and Functions – Nuon Chea, para. 317; Section 8: Roles and Functions – Khieu Samphan, para. 374; Section 11: Movement of the Population (Phase Two), paras 577, 605; *see also*, Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 131, ERN (En) 00103788 (He was authorised to visit the West and Southwest, as well as accompanying NORODOM Sihanouk in the Central and Northwest. He had thus witnessed the organisation efforts in the countryside); Book by N. Sihanouk: *War and Hope*, E3/1819, p. 90, ERN (En) 00349589 (Including photos of NORODOM Sihanouk, KHIEU Samphan and others in Siem Reap in February 1976); T. 29 May 2013 (KHIEU Samphan), pp. 21-22 (In 1976, he saw canals and dams including at Trapeang Thma dam and one to the west of Battambang. As a result of dams, dry lands were transformed into chequered rice fields to the horizon and "that excited me").

[2438] T. 18 April 2012 (SAUT Toeung), pp. 69, 74.

[2439] *See* Section 7: Roles and Functions – Nuon Chea, paras 312, 337, 338; DK Telegram, E3/889, 27 October 1977 (CHHON reporting to M-870 and copying, among others, NUON Chea, requesting that Angkar's forces be reinforced immediately); DK Telegram, E3/908, 25 December 1977 (PHUONG to M-870 and copying, among others, NUON Chea, reported on a losing situation vis-a-vis the Vietnamese and " personally proposing that Angkar closely assist and intervene"; requesting Angkar intervene and permit them to organise battalions and that Angkar personally supply them with weapons; concluding they request Angkar's instructions and decisions in accordance with the situation); DK Telegram, E3/918, 12 January 1978 (Sae to 870 and copying POL Pot and NUON Chea, reporting on fighting with the enemy); Zone 560 Report, E3/179 (also available at E3/180), 29 May 1977 (M-560 to Angkar reporting on a number of incidents with enemies); Zone 560 Report, E3/1179, 8 June 1977, ERN (En) 00583917, 00583919 (M-560 to Angkar reporting on a number of incidents with enemies and concluding the enemies who had been identified were arrested and smashed successively); DK Report, E3/950, 11 May 1978, at ERN (En) 00185215 (Nhim to Angkar 870, reporting that they managed to smash all internal enemies who attacked on 5 May), 00185216 (Reporting measures taken, he noted "Prevent it more carefully; be more highly vigilant; smash invasive enemies; successively sweep all destructive elements; and prevent all acts of secret moving and looting"); DK Report, E3/1183, 22 August 1977 (Region 3 to Angkar M-560, reporting that class enemies who hid themselves within Districts, cooperatives and among people were still causing incidents against the revolution and recounting those instances); DK Telegram, E3/1120, 6 November

774. While in late 1975 and early 1976 the CPK was increasingly faced with international reports of human rights violations, DK authorities were also engaged in diplomatic relations with communist, neighbouring and non-aligned countries and organisations.[2440] However, Party control in Cambodia was not yet deemed firm enough to open the country.[2441] In late 1977 and 1978, faced with an escalating conflict with Vietnam, the Party determined that this would have to change, and that Cambodia could not remain isolated internationally.[2442]

775. On 27 September 1976, Prime Minister POL Pot was provisionally relieved of duties allegedly for health reasons, and NUON Chea served as interim Prime Minister.[2443] In a speech broadcast on Phnom Penh radio on 17 September 1977, POL Pot re-emerged as Prime Minister and CPK Secretary and for the first time, publicly confirmed the existence of the CPK and the party line to build and defend the

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1977 (San (Mo-560) to Nhim and copying, among others, NUON Chea, reported measures taken by the Sector regarding enemies, namely: identifying enemies; propagandising and re-educating people about the socialist revolution; the grassroots and military must cooperate closely to smash all kinds of enemies); DK Telegram, E3/243, 19 January 1978 (SAO Phim (Chhon) to Brother Pa and copying, among others, Uncle NUON); DK Telegram, E3/910, 24 December 1977 (Nhim to Angkar 870, requesting advice about attacking a location where enemies associated with super-traitor IN Tam were present); Zone 560 Report, E3/863, 17 May 1978 (Nhim to Angkar 870, he requested advice from Angkar as to how to deal with, among other groups, soldiers from the previous regime and reporting on the state of his own health).

[2440] French Foreign Ministry Memo, Subject: Cambodian Review (February 1976), E3/490, 11 May 1976, p. 10, ERN (En) 00610827 (Faced with accounts of forced labour, famine and summary executions, the Khmer Rouge appeared willing to leave the gates of Phnom Penh slightly ajar. Foreign visits were expected once every fortnight); U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 27, ERN (En) 00443173 (Cambodia had resumed diplomatic relations with Vietnam, China, North Korea, Albania, Yugoslavia, Cuba, Laos and Thailand. It also made ties with all ASEAN nations); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 20, ERN (En) 00003256 (To contribute, the Foreign Ministry would expand friendships especially with revolutionary countries, those in Southeast Asia and the progressive forces in the non-aligned nations and the third world); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 52, ERN (En) 00003288 (Close friends of DK were China, Korea and Albania; Yugoslavia was a friend, as were the non-aligned countries); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary's appearance at the Non-Aligned Summit indicated that Cambodia was ready to emerge from its shroud of mystery and seek wider international contacts).

[2441] IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 36, ERN (En) 00182333 (Not until 1978 was control considered firm enough to open the country).

[2442] *An Encounter with KHIEU Samphan* (The Nation), E3/660, 25 January 1981, p. 3, ERN (En) S 00029266 (The Party eventually realised that DK could not be isolated); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 28, ERN (En) 00762400 (DK had not done enough propaganda work internationally, while the Vietnamese had been able to make much propaganda); IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 3, ERN (En) 00342502 (The main reason for opening up in 1978 was the Vietnamese threat and the recognition that DK could not rely on themselves, needed diplomatic support and could not continue with a policy of economic self-reliance).

[2443] Section 7: Roles and Functions – Nuon Chea, paras 322-323.

country.[2444]

776. During the Fifth Party Congress between 1 and 2 November 1978, the Party indicated that agriculture, economics and defence continued to be its main focus.[2445]

14.1.5. ***Legal Findings***

777. The Chamber is therefore satisfied that, at the latest, by June 1974 until December 1977, there was a plurality of persons who shared a common purpose to "implement rapid socialist revolution through a 'great leap forward' and defend the Party against internal and external enemies, by whatever means necessary".[2446] Members of the Standing and Central Committees, government ministers, and Zone and Autonomous Sector secretaries, including NUON Chea, KHIEU Samphan,[2447] POL Pot,[2448] IENG Sary,[2449] SON Sen,[2450] VORN Vet,[2451] Ta Mok,[2452] SAO Phim,[2453]

[2444] Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 2, ERN (En) 00715046; *see also*, French Ministry of Foreign Affairs Telegram, Subject: Situation in Cambodia: Mr. POL Pot Official Visit to China and North Korea, E3/484, 26 October 1977, pp. 2-3, ERN (En) 00771181-2; OTAN Memo, Subject: Recent Political Developments in Cambodia, E3/493, 28 October 1977, p. 1, ERN (En) 00700574; French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, p. 1, ERN (En) 00751831.

[2445] Fifth Party Congress Meeting Minutes, E3/816, 2 November 1978, pp. 1-3, ERN (En) 0021339-41 (Of the committees assigned, two were for the economy, one agriculture and two military); *see also*, T. 11 June 2012 (SAO Sarun), pp. 22-34, 31-37.

[2446] Closing Order, paras 156, 158, 1524, 1528.

[2447] *See* Section 15: The Criminal Responsibility of Nuon Chea, para. 862; Section 16: The Criminal Responsibility of Khieu Samphan, para. 963.

[2448] POL Pot played a leading role in developing the CPK political line from 1958, became a member of the Standing Committee at the First Party Congress in September 1960, was appointed Secretary at the Second Congress in 1963, was present at, participated in and presided over other Party Congresses, as well as most key meetings of the Centre at which the political line and strategies of the Party were discussed and decided upon throughout the revolutionary and DK periods (Section 3: Historical Background, para. 87; Section 5: Administrative Structures, para. 202).

[2449] IENG Sary became a member of the Standing Committee at the September 1960 Party Congress. He thereafter attended and participated in most key meetings and congresses at which the Party line was discussed and decided upon. Further, throughout the revolutionary and DK eras, he had responsibility for foreign affairs, defending the CPK, endorsing and advocating for the Party line (Section 3: Historical Background, para. 87; Section 5: Administrative Structures, para. 203).

[2450] SON Sen attended all Party Congresses, was likely a member of the Standing Committee and attended many meetings and congresses at which the Party's line, in particular in relation to defence, was discussed and decided upon. Throughout the revolutionary and DK eras he had military authority, first as Minister of Armaments and later as Minister of National Defence and chief of the General Staff (Section 3: Historical Background, para. 87, 133; Section 5: Administrative Structures, para. 203, 204, 236).

[2451] VORN Vet attended all Party Congresses and was likely a member of the Standing Committee. He attended and participated in most key meetings at which the Party line, particularly in relation to the economy, were discussed and decided upon. During the revolution, he was secretary of the Special Zone and was put in charge of economics during the DK era (Section 3: Historical Background, para. 87, 133; Section 5: Administrative Structures, para. 203, 235).

ROS Nhim,[2454] KOY Thuon,[2455] KE Pauk,[2456] CHANN Sam,[2457] CHOU Chet,[2458] BOU Phat,[2459] YONG Yem,[2460] BORN Nan,[2461] IENG Thirith[2462] and MEY Prang,[2463] were part of this group with the specified common purpose. The evidence establishes

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[2452] By 1963, Ta Mok was a member of the Standing Committee and thereafter attended all Party Congresses. He was secretary of the Southwest Zone and regularly attended meetings of the Centre in Phnom Penh or his Zone (Section 3: Historical Background, para. 89, 124, 133; Section 5: Administrative Structures, para. 203, 219; Section 7: Roles and Functions – Nuon Chea, para. 340).

[2453] From September 1960, SAO Phim was a member of the Standing Committee and attended all Party congresses. He was also secretary of the East Zone, Vice-President of the State Presidium, and regularly attended meetings of the Centre in Phnom Penh or his Zone (Section 3: Historical Background, para. 87; Section 5: Administrative Structures, para. 203, 219).

[2454] By 1963, ROS Nhim was a member of the Standing Committee and attended all Party congresses. He was also secretary of the Northwest Zone, Vice-President of the State Presidium, and regularly attended meetings of the Centre in Phnom Penh or his Zone (Section 5: Administrative Structures, para. 219; Section 8: Roles and Functions – Khieu Samphan, para. 381).

[2455] In the revolutionary period, KOY Thuon became a member of the Central Committee regularly attending meetings with other senior leaders. He was also Secretary of the Central (old North) Zone and was assigned oversight of commercial matters within the Party hierarchy until his arrest in late 1975. In these positions, he held meetings in his Zone concerning implementation of the Party's line and attended meetings at which the Party's line was decided upon (Section 3: Historical Background, para. 141, 162; Section 5: Administrative Structures, para. 220, 232; Section 8: Roles and Functions – Khieu Samphan, para. 400).

[2456] In the revolutionary period, KE Pauk was a member of the Central Committee regularly attending meetings with other senior leaders. After KOY Thuon's arrest in late 1975, he became secretary of the Central (old North) Zone. He attend both the Third and Fourth Party Congresses, as well as other meetings concerning implementation of the political line in his Zone and/or at which the Party's line was discussed and decided upon (Section 3: Historical Background, para. 95).

[2457] CHANN Sam was appointed secretary of the North Zone after its creation around 1977. In this role, he held meetings concerning implementation of the political line and attended meetings with other senior leaders where the Party line was discussed and decided upon (Section 5: Administrative Structures, para. 220).

[2458] CHOU Chet was secretary of the West Zone. He held meetings in his Zone concerning implementation of the Party's line and attended meetings with other senior leaders at which the Party line was discussed and decided upon (Section 3: Historical Background, para. 95; Section 5: Administrative Structures, para. 220).

[2459] BOU Phat was secretary of Autonomous Sector 103 until its incorporation into the North Zone around 1977. In this role, he held meetings concerning implementation of the Party's line in his Sector and attended meetings with other senior leaders at which the Party line was discussed and decided upon (Section 11: Movement of Population (Phase Two), para. 586).

[2460] YONG Yem was secretary of Autonomous Sector 505 until 1976 when he was appointed to a DK diplomatic role. He held meetings concerning implementation of the Party's line in his Sector and attended meetings with other senior leaders at which the Party line was discussed and decided upon (Section 11: Movement of Population (Phase Two), para. 607).

[2461] BORN Nan was secretary of Autonomous Sector 505 from 1976. He held meetings concerning implementation of the Party's line in his Sector and attended meetings with other senior leaders at which the Party's line was discussed and decided upon (Section 11: Movement of Population (Phase Two), para. 607).

[2462] IENG Thirith was a party member from its inception and held propaganda and social affairs roles throughout the revolutionary and DK eras. She was appointed DK Minister of Social Affairs in 1976. She regularly attended meetings with other senior leaders at which the Party's line was discussed and decided upon (Section 5: Administrative Structures, paras 232, 254; Section 7: Roles and Functions – Nuon Chea, para. 327; Section 11: Movement of the Population (Phase Two), para. 605).

[2463] MEY Prang was appointed Minister of Transportation and Communications in April 1976 and in this role attended meetings with senior leaders at which the Party's line was discussed and decided upon (Section 11: Movement of the Population (Phase Two), para. 578).

that this common purpose to rapidly build and defend the country through a socialist revolution, based on the principles of secrecy, independence-sovereignty, democratic centralism, self-reliance and collectivisation, was firmly established by June 1974 and continued at least until December 1977.

778. This common purpose was not in itself necessarily or entirely criminal. The Closing Order, however, alleges that participants implemented the common purpose through the Population Movement Policy (Section 14.2) and Targeting Policy (Section 14.3) which resulted in and/or involved crimes.[2464]

14.2. The Population Movement Policy

779. According to the Closing Order, the objectives of the Population Movement Policy included fulfilling the labour requirements of the cooperatives and worksites, providing food supplies to the people, protecting the population from security threats, and depriving the city dwellers and former civil servants of their economic and political status.[2465] The CPK implemented the Population Movement Policy in three phases between 17 April 1975 and 6 January 1979 which constituted part of a wider pattern of population movements.[2466] Only phase one, beginning on 17 April 1975, and phase two, beginning in the latter part of 1975 until 1977, are included within the scope of Case 002/01.[2467]

780. The Co-Investigating Judges charged the Accused, among other crimes, with

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[2464] Closing Order, paras 157-158, 1525, 1528; *see also*, Section 3: Historical Background, paras 102-112, 132-152; Section 4: General Overview: 17 April 1975 - 6 January 1979, paras 169-172. The Chamber notes that while the English version of the Closing Order alleges that the policies forming part of the common purpose "resulted in and/or involved the commission of crimes", the French version alleges that the policies "*a consisté en la commission de crimes*". The Chamber relies on the English version of the Closing Order, considering, in particular, that the Khmer version reflects the English and the Accused therefore had adequate notice. In any event, the Chamber also notes that the French version of its decision concerning the applicability of JCE before the ECCC interpreted the relevant language to mean that implementation of the policies "*a résulté 'en la commission de crimes, ou en a impliqué la perpétration par des membres de l'entreprise criminelle commune ainsi que par des personnes qui n'en faisaient pas partie'*" (Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 19).

[2465] Closing Order, para. 161.

[2466] Closing Order, paras 160, 162-164.

[2467] Closing Order, para. 163; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

extermination in connection with movement of population (phases one and two),[2468] and the other inhumane act of enforced disappearances in connection with phase two.[2469] However, the Closing Order, as limited in Case 002/01 to the implementation of the Population Movement Policy, does not allege that the Accused committed through a JCE the crime of extermination or the other inhumane act of enforced disappearances in the course of phases one and two.[2470] The Chamber will not therefore consider these two crimes in its findings below regarding a JCE.

781. The Chamber notes that the Closing Order also explicitly links the commission of a number of crimes during movement of population (phases one and two) to the implementation of the Targeting Policy.[2471] However, taking into account the scope of Case 002/01 following the severance order, the Chamber limited examination of the Accused's responsibility for the Targeting Policy to the execution of former Khmer Republic officials at Tuol Po Chrey.[2472] Accordingly, the Chamber will consider the Accuseds' responsibility for crimes committed through the JCE during movement of population (phases one and two) (other than extermination and the other inhumane act of enforced disappearances) only with regard to the implementation of the Population Movement Policy. In this regard, the Chamber emphasises that one of the objectives of the Population Movement Policy was depriving the city dwellers and former civil servants of their economic and political status.[2473]

14.2.1. *Overview*

782. The Party leadership planned to build and defend the country by mobilising all forces to focus on agriculture, eventually transforming Cambodia into a modern

[2468] Closing Order, paras 1381-1383, 1387-1390.
[2469] Closing Order, paras 1381.
[2470] Closing Order, para. 1525(i); Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.
[2471] Closing Order, para. 209.
[2472] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.
[2473] Closing Order, para. 161.

agricultural economy and later, an industrial state.[2474] Based on the principle of self-reliance, priority was given to building irrigation projects,[2475] expanding the rice fields,[2476] and developing those industrial activities that served the development of agriculture.[2477] Resulting agricultural exports, particularly those between late 1975

[2474] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 56, ERN (En) 000798114 (Agriculture was a fundamental factor in building the country; agriculture was necessary to build industry and transform DK into an industrial country); *IENG Sary on Economic Progress* (in SWB Collection), E3/649, 1 January 1977, p. 1, ERN (En) S 00004064 (Rice production constituted the main assets to build and defend the country); KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 3, ERN (En) 00000927 (People had to believe in agriculture to feed people and build the country. They couldn't be afraid of hardship. POL Pot's idea was to provide water to the people and have them work in the field to build the country); *What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 1, ERN (En) 00185418 (Agriculture was the basis of the national re-organisation. Profits from agriculture would then be used to establish industry which would then serve agricultural needs); NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 13, ERN (En) 00329516 (The foundation was agriculture, then building small industry, then intermediate industry and finally, large-scale industry with the goal of self-reliance and independent struggle to attack the enemy); POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 3, ERN (En) 00750099 (The desire and plan was to develop industry using agriculture as the basis); French Ministry of Foreign Affairs Circular, Subject: Cambodia News Reports (November-December 1976), E3/1784, 17 January 1977, p. 2, ERN (En) 00658183 (Three quarters of Khmer radio programs were devoted to programs on agriculture, advocating people to follow the lead on building dikes and rice production and giving advice on how to fight floods and insects); KHIEU Samphan Interview Transcript, E3/4050, undated, p. 1, ERN (En) 00789062 (Both healthy and sick people had to work; without quick work more people would starve); *see also*, Section 4: General Overview: 17 April 1975 - 6 January 1979, paras 193, 195, 197; Section 11: Movement of the Population (Phase Two), paras 602, 604; Section 14: Joint Criminal Enterprise, para. 738.

[2475] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 57, ERN (En) 000798114 (Priority was being given to solving the problem of water: building reservoirs, dams and canals throughout the country relying solely on the worker-peasants); *IENG Sary on Farming and Food Supplies* (in SWB Collection), E3/552, 16 November 1977, p. 5, ERN (En) S 00008513 (In connection with agriculture, focus was on solving water problem in order to increase production of rice); *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, p. 3, ERN (En) S 00004166 (Dams, reservoirs and ditches were built and the "progressive corps" were at other worksites working to build dams, reservoirs and ditches; there were 10,000, 20,000 or even 30,000 workers at each construction site); KHIEU Samphan Speech at the Third Anniversary of the Founding of DK, E3/202, 17 April 1978, p. 6, ERN (En) 00002961 (There was rapid progress in agriculture and rice-growing and water-works; these problems were solved very quickly); *IENG Sary on Economic Progress* (in SWB Collection), E3/649, 1 January 1977, p. 1, ERN (En) S 00004064 (The movement to solve water problems and fertilizer was based on strict independence of action, self-reliance and collectivism); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 24, ERN (En) 00762396 (Through irrigation projects, the country was accumulating capital for development on the basis of independence and self-reliance); POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 1, ERN (En) 00750097 (Success in agriculture depended on water); French Ministry of Foreign Affairs, Subject: Cambodia, One Year Later, E3/2657, 26 April 1976, p. 6, ERN (En) 00525796 (New construction sites sprung up throughout country to build water works); *see also*, Section 11: Movement of the Population (Phase Two), para. 608.

[2476] *Phnom Penh Rally Marks 17th April Anniversary* (in SWB Collection), E3/562, 16 April 1978, p. 3, ERN (En) S 00010560 (KHIEU Samphan declared that, in 1977, the people rapidly increased the amount of rice fields); *see also*, Section 11: Movement of the Population (Phase Two), para. 604.

[2477] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 58, ERN (En) 000798114 (As for industry, the Party leadership was focusing on factories that served the

and 1977, would secure the capital necessary to build and defend the country.[2478] Until that time, without adequate resources or tools, the only capital at the disposal of the Party leadership to reach this goal was the people.[2479]

783. KHIEU Samphan explained that, in order to build the country quickly, solve food shortages and produce surplus rice allowing the country to transform into an industrialised state, the people had to be coerced to join the cooperatives.[2480] In his

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development of agriculture); *Restoration of Industry* (in SWB Collection), E3/649, 15 December 1976, p. 1, ERN (En) S 00004064 (Factories were restored and new ones built to support the agricultural movement, using locally available raw materials in accordance with the stance of independence and self-reliance); *What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 1, ERN (En) 00185418 (Profits from agriculture would be used to establish industry which would then serve agricultural needs).

[2478] IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 57, ERN (En) 000798114 (Exportation of rice, rubber and other agricultural products was designed to secure capital for defence and construction); *IENG Sary on Farming and Food Supplies* (in SWB Collection), E3/552, 16 November 1977, p. 5, ERN (En) S 00008513 (Rice was being exported in tens of thousands of tonnes in order to accumulate capital to finance national defence and construction efforts); KHIEU Samphan Speech at Third Anniversary of Founding of DK, E3/169, 17 April 1978, p. 5, ERN (En) 00280393 (In 1977, they were able to export which produced capital for nation-building); POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 1, ERN (En) 00750097 (By 1977, they had achieved production targets so they were able to export rice to import necessary commodities), p. 3, ERN (En) 00750099 (Agriculture would build capital which could then be used to build industry); *see also,* Section 11: Movement of the Population (Phase Two), para. 602.

[2479] IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976, pp. 16-17, ERN (En) 00586813-4 (Efforts to build the economy had to be based on the inexhaustible and creative strength of the people, the use of all resources and the full potential of the nation); KHIEU Samphan's Speech at Anniversary Meeting (in SWB Collection), E3/200, 15 April 1977, p. 3, ERN (En) S 00004166 (Everything was done relying on the strength of the people. Without machines, the people were self-reliant); *IENG Sary on Farming and Food Supplies* (in SWB Collection), E3/552, 16 November 1977, p. 5, ERN (En) S 00008513 (Dams, canals and reservoirs were built solely by workers and peasants relying completely on their own efforts); KHIEU Samphan Speech at the Third Anniversary of the Founding of DK, E3/202, 17 April 1978, p. 8, ERN (En) 00002963 (To build the country, it was necessary to fundamentally rely upon the forces of the people); Correspondence with KHIEU Samphan, E3/3193, undated, p. 2, ERN (En) 00002775; French Ministry of Foreign Affairs Circular, Subject: Cambodia News Reports (November-December 1976), E3/1784, 17 January 1977, p. 2, ERN (En) 00658183 (Only one factor of production – manual labour – was put to full benefit); *see also,* Section 11: Movement of the Population (Phase Two), para. 602.

[2480] KHIEU Samphan Interview Transcript, E3/4049, undated, p. 1, ERN (En) 00789058 (People would not voluntarily take part in cooperatives, even poor peasants would not accept high-level cooperatives. Therefore, there had to be coercion first); KHIEU Samphan Interview Transcript, E3/4050, undated, p. 1, ERN (En) 00789062 (First, the people were coerced, including city people); KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 4, ERN (En) 00000928 (In 1975, people were evacuated to live in the cooperatives. At first they were coerced, but they had enough to eat and defence was easier); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 61, ERN (En) 00103753 (Superior level cooperatives had to be imposed on the people because peasants in any country would never agree to give all the fruits of their labour to any organisation), p. 111, ERN (En) 00103778 (POL Pot believed that the only way to ensure the movement's survival was "forced collectivsation"); *see also,* Section 11: Movement of the Population (Phase Two), paras 576-577 (Concerning Party publications and directives ordering that people be sent to build and expand the

doctoral thesis, he wrote that it was necessary for some of those the Khmer Rouge would later label as 'New People' (including landlords, retailers and usurers) to be driven from their unproductive activities to participate in production.[2481] He also argued that "methodical organisation of the peasant force, into mutual aid teams and then into cooperatives", would increase productivity, opening up new land and improving irrigation.[2482] Eventually, KHIEU Samphan believed the people would become willing participants in the socialist revolution. They would see the fruits of their labour and accept the part they played, all as peasants, in defending and re-building Cambodia.[2483]

784. Further, by displacing the people, enemy networks would be separated, particularly those embedded among the always suspect 'New People'. Rebellion and/or foreign interference could thus be averted.[2484] During movements, as well as at their destinations in cooperatives and work-sites, the 'New People' could be re-educated and class divisions could be erased, while all worked to achieve the Party's production targets.[2485] 'New People' could not be trusted until they underwent

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cooperatives and would be subject to re-location until each cooperative could provide its own labour force for all activities).

[2481] Section 8: Roles and Functions – Khieu Samphan, para. 354.

[2482] Thesis by KHIEU S.: *Cambodia's Economy and Industrial Development*, E3/123, 1959, p. 104, ERN (En) 00750637; Section 8: Roles and Functions – Khieu Samphan, para. 354.

[2483] KHIEU Samphan Interview Transcript, E3/4050, undated, p. 1, ERN (En) 00789062 (When the people saw the rice fields, it would become clear and they would be glad that they joined in re-building the country and everyone would come to the idea that they were peasants); KHIEU Samphan Speech at Third Anniversary of Founding of DK, E3/169, 17 April 1978, p. 8, ERN (En) 00280396 (The people came to realize that the collective regime could effectively defend and build the country and rapidly improve standards of living); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 61, ERN (En) 00103753 ("A long, patient explanation would be necessary before peasants would agree to give all of the fruits of their labour to the cooperative. They also had to be shown concrete proof that this production system would improve their lives"); *see also*, KHIEU Samphan Interview Transcript, E3/3196, undated, p. 4, ERN (En) 00815867 (KHIEU Samphan claimed there was a circular sent to the cadres and directing them to the explain to people regarding the shortages of rice and medicine due to the fact that the country had just emerged from war).

[2484] *See* Section 3: Historical Background, paras 108, 110, 153, 169; Section 7: Roles and Functions – Nuon Chea, para. 325; Section 10: Movement of the Population (Phase One), paras 525-526; Section 11: Movement of the Population (Phase Two), para. 634; Section 14: Joint Criminal Enterprise, para. 737.

[2485] *Revolutionary Flag*, E3/10, Sept-Oct 1976, p. 31, ERN (En) 00450531 (The evacuations furthered the class struggle); Report on Third Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 8, ERN (En) 00636015 (The evacuations attacked and demolished the feudal-landowner and capitalist classes); Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976, p. 10, ERN (En) 00940345 (If the Party had left people and had not evacuated them from cities and towns, the Party would not have the peace and tranquility it enjoyed later. If it had not been absolute about making cooperatives, and not been absolute about making socialism, it would not be victorious and living in peace); IENG Sary Speech at

struggle and hardship in the socialist revolution, learning how to farm and work, and their views were aligned with that of the Party.[2486]

785. Once evacuated, people were hungry and often without shelter. Food shortages were a country-wide problem,[2487] except at the Party Centre where the leadership appeared to be well-fed throughout the DK era.[2488] The situation especially affected evacuees.[2489] NUON Chea and KHIEU Samphan acknowledged that the Party was

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a Banquet Welcoming the Delegation of the American Communist Party, E3/211, 22 April 1978, p. 3, ERN (En) S 00004782 (The country had successively acquired more bases to solve contradictions between workers and peasants and between cities and countryside); French Ministry of Foreign Affairs Circular, Subject: Cambodia News Reports (November-December 1976), E3/1784, 17 January 1977, p. 1, ERN (En) 00658182 (Based on consistent refugee reports and directives broadcast on the radio, it was possible to get a sense of Cambodian economic system. Private property was abolished, all means of production and subsistence belonged to the collective. There was a classless society with those who had power, property and knowledge eliminated); *see also,* Section 3: Historical Background, paras 102-118; Section 10: Movement of the Population (Phase One), paras 536, 545; Section 11: Movement of the Population (Phase Two), paras 602-623.

[2486] T. 13 December 2011 (KHIEU Samphan), p. 91 (Membership in the CPK required that one had experienced the struggles and the movement of the revolution); NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 8, ERN (En) 00329511; Correspondence with KHIEU Samphan, E3/3193, undated, p. 2, ERN (En) 00002775; U.S. State Department Telegram, Subject: Life inside Cambodia, E3/3559, 31 March 1976, p. 2, ERN (En) 00443064 (The Cambodian national anthem says that the blood of the workers, peasants and combatants liberates them from slavery); KHIEU Samphan Interview Transcript, E3/4045, undated, p. 1, ERN (En) 00790538 (The Phnom Penh people had never struggled and did not yet understand things); *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 19 April 1977, pp. 1-2, 6, ERN (En) S 00004164-5, S 00004169 (The classes from Phnom Penh were becoming more patriotic as they realised that the road to independence was difficult); *see also,* Section 11: Movement of the Population (Phase Two), paras 613-623.

[2487] KHIEU Samphan Interview Transcript, E3/4048, undated, pp. 1-2, ERN (En) 00790540-1 (Even in the country, the people could hardly feed themselves); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 5, ERN (En) 00517766 (In the liberated Zones Gen. SOR Buon passed through as he fled Cambodia, the villagers were often unable to offer anything to eat); DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 51, ERN (En) 00003287 (The problem was still food and shelter), p. 52, ERN (En) 00003288 (1976 was marked as a key year for production because in 1975 three million from Phnom Penh needed shelter and food supplies).

[2488] T. 7 May 2013 (Philip SHORT), pp. 115-117, *referring to* Book by P. SHORT: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 346-348, ERN (En) 00396554-6 (The leadership had fresh bread every morning, feasts with chicken, pig, wine and sticky rice. Indeed, all the leaders, including POL Pot, NUON Chea and KHIEU Samphan put on weight and acquired an unhealthy reddish complexion. Although these leaders did not have absolute luxury, the gap between what they had and what the people had was enormous).

[2489] KHIEU Samphan Interview Transcript, E3/4041, undated, p. 2, ERN (En) 00790271 (Many people died of starvation and the situation bore heavily on the evacuees. This was unavoidable); French Foreign Ministry Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 28 January 1978, p. 5, ERN (En) 00389178 (IENG Sary acknowledged that the evacuation proved difficult and 2,000 died en route. The people were not used to living in the country, so the period after the evacuation was also tough with malaria outbreaks); IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 29, ERN (En) 00182326 (People evacuated from Phnom Penh were not happy); KHIEU Samphan SOAS/HRW Interview, E3/198, 17 August 2005, p. 1, ERN (En) 00184680 (The decision of the Standing Committee to evacuate Phnom Penh and other towns made evacuees unhappy and burdened the base people); *see also,* Section 10: Movement of the Population (Phase One), paras 521, 537; Section 11: Movement of the Population (Phase Two), para. 585.

aware that the people would sacrifice and face hardship. As a result, both during evacuations and thereafter, they acknowledged that many suffered or even died due to illness or starvation.[2490] KHIEU Samphan later explained that the Khmer Rouge leadership was at an impasse: if there were no evacuations, people would die; if there were evacuations, people would still die.[2491] NUON Chea and KHIEU Samphan both believed that the priority was building and defending the country. Only after the goals of the revolution – an independent, self-reliant and socialist country – were achieved could human rights be guaranteed.[2492]

786. Below, the Chamber addresses the policies specific to evacuation of the cities (Section 14.2.2) and movement of people between rural areas (Section 14.2.3). These

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[2490] *What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 2, ERN (En) 00185419 (The first months after liberation were quite tough: 2000-3000 died during the evacuation of Phnom Penh and several thousands died in the paddy fields); NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 10, ERN (En) 00329513 (There were deaths of many kinds during DK including those due to illness, food shortages, and those who were smashed by bad groups. NUON Chea admitted that the DK was responsible for the killing of educated people, but that it was unintentional); KHIEU Samphan Interview Transcript, E3/3198, undated, p. 13, ERN (En) 00815888 (The work was difficult and some people had to sacrifice their siblings, children and grandchildren. But people should not think of their personal anger, but of the future of the country and what was most important was those who dared fight for liberation, the success in protecting national sovereignty); KHIEU Samphan Interview Transcript, E3/4037, undated, p. 2, ERN (En) 00793391 (In responding to a question about evacuations and deaths during DK, KHIEU Samphan said they strived to struggle nearly to death in order to protect the country against foreign control); KHIEU Samphan Interview Transcript, E3/4043, undated, p. 2, ERN (En) 00786110 (The majority of deaths were because of a lack of medicine and starvation. Things became worse as time went on); KHIEU Samphan Interview Record, E3/210, 14 December 2007, p. 3, ERN (En) 00156949 (KHIEU Samphan realised that, during the evacuation, people might have fallen along the way); Book by GINA T. and THET S.: Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims, E3/4202, p. 16, ERN (En) 00757484 (NUON Chea admitted that, when travelling to Phnom Penh shortly after it was evacuated, he personally saw evacuees walking along and acknowledged that it was difficult for them to travel. He later saw dead bodies in houses in Phnom Penh); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 55, ERN (En) 00103750 (He thought of all the people – elderly, pregnant, young and sick having to travel by foot under scorching sun, wondering if they would be able to take their belongings), p. 118, ERN (En) 00103782 (Traumatized by the forced evacuation of the cities, torn and confronted by the most absurd contradictions, he could not bring himself to raise his voice in opposition to the violence perpetrated in his name. He was obeying his conscience, which advised him to contribute to the defence of his country's right to live as a sovereign nation).

[2491] KHIEU Samphan Interview Transcript, E3/4040, undated, p. 2, ERN (En) 00789054; KHIEU Samphan Interview Transcript, E3/4048, undated, pp. 1-2, ERN (En) 00790540-1; KHIEU Samphan Interview Transcript, E3/4041, undated, p. 1, ERN (En) 00790270.

[2492] NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 14, ERN (En) 00329517 (Solving the economic livelihood, that was never easy: some died, some lived, but in comparison, one nation was maintained. Human rights and independence are mutually dependent as there can be no human rights without independence); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 30, ERN (En) 00103738 (Declaring that when human rights and defence of one's country contradict, "defence of one's country's independence and sovereignty is always and ever legitimate and necessary").

policies originated in, and were based upon, the Party's experience before 1975.[2493] The Chamber has already found that, before 17 April 1975, the Party had a policy to evacuate towns and cities.[2494]

14.2.2. *Evacuation of Cities*

14.2.2.1. *Policy*

787. The Party leadership, including POL Pot and NUON Chea, viewed cities as a threat: there were many enemies in the cities, which were the headquarters of the ruling class and its "apparatus of oppression".[2495] In speeches, KHIEU Samphan endorsed this suspicion and distrust,[2496] later confirming that this was the Party line throughout the revolution.[2497] Thus the Khmer Rouge indoctrinated cadres and people in the bases to be hostile towards, and suspicious of, city people.[2498] As a result,

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[2493] IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 4, ERN (En) 00442664; IENG Sary Interview by ABC Television, E3/93, 6-19 September 1996, p. 7, ERN (En) 00078611 (IENG Sary discussed with POL Pot in 1974 the evacuations of Stung Trang and Kratie); Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 57, ERN (En) 00103751 (POL Pot told KHIEU Samphan that the evacuations were part of the collectivisation policy which had already been pursued in the countryside before the end of the war).

[2494] Section 3: Historical Background, paras 104-105, 111-112, 146.

[2495] NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 29, ERN (En) 00762401 (Party members had to be especially careful when work had to be done in the cities in the revolutionary period), p. 32, ERN (En) 00762404 (Although there were better living conditions in cities, there were also many enemies), p. 33, ERN (En) 00762405 (The city was the headquarters of the ruling class and its apparatus of oppression); POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 4, ERN (En) 00750100 (There were weaknesses in the cities and strengths in the country); *Revolutionary Flag*, E3/11, September 1977, p. 19, ERN (En) 00486230 (From its early days the Party recognised that the 'general solution' to solving 'contradictions' was to whip up the peasants to struggle and fight against the exploiting class, the feudalist landowners; they needed to arouse the peasants to see the contradictions and to burn with class hatred and take up the struggle), p. 27, 00486238 (The Party's "operational line was that the countryside was the support base," because the "networks of the enemy's repressive apparatus were concentrated" in the cities and "the enemy was everywhere there"); *see also*, Section 3: Historical Background, paras 111-112.

[2496] *KHIEU Samphan Report* (in FBIS Collection), E3/273, 6 January 1976, ERN (En) 00167813 (In his comments on the new draft constitution and in particular on the provision concerning culture, KHIEU Samphan stated that it was necessary to "oppose all corrupt, reactionary cultures of the various oppressive classes and of imperialism and colonialism in Cambodia. […] The houses in Phnom-Penh are full of unthinkable things. I do not know how to describe them. […] if we allow this corrupt culture to eat away at our country it will surely affect our efforts to defend our country and protect our independence and sovereignty").

[2497] Book by KHIEU S.: *Considerations on the History of Cambodia*, E3/16, ERN (En) 00498231-32 (The Party's line was that the countryside was an important foundation for the revolution whereas the city is the apparatus of the power-holding classes and the imperialists, the location where enemies of the revolution assemble their forces to smash us).

[2498] François PONCHAUD Interview Record, E3/4591, 13 February 2009, p. 3, ERN (En) 00885116 (The motive was ideological: a cadre told PONCHAUD that towns were no good because nothing was produced there and there was corruption); T. 22 April 2013 (CHHOUK Rin), pp. 55-56 (Witness confirmed that it was common knowledge before 17 April 1975 that those who lived in the cities were

hatred and distrust of 'New People' was engrained.[2499] These feelings were encouraged and lasted throughout the DK era.[2500]

788. In 1974, and then again in February and April 1975, the Party leadership decided that the forced transfer of the population of the cities was its first priority during the socialist revolution phase following the liberation of the country.[2501] The plan did not make any provision for the well-being or the health of those being moved, in particular the vulnerable. NUON Chea explained that the Party leadership did not have time to consider special evacuation measures for hospital patients.[2502] In any event, he claimed the Party leadership believed that the evacuation of at least 2 million people could be adequately managed because sick people and patients were assisted and those who had cars or carts could use them as long as they left Phnom Penh.[2503] The underlying rationale for the forced movement of the inhabitants of urban centres was discussed and disseminated in Party publications and meetings: in particular, to identify enemies among the 'New People', re-educate the 'New People', and organise and allocate a work force to focus on agriculture and infrastructure priorities.[2504] By evacuating the people, the Party leadership believed it had preserved revolutionary achievements, vanquishing the capitalist and feudalist classes.[2505]

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not yet under Khmer Rouge control and that the cities were occupied by enemies. As a military man, witness knew that people who occupied the cities were enemies); T. 7 May 2013 (Philip SHORT), pp. 125-126 (There was a clear definition of the enemy, they were those who stayed in the cities. To reconcile with this enemy would be akin to acknowledging that you trust them, but the Khmer Rouge did not trust city people); T. 6 May 2013 (Philip SHORT), pp. 21-22 (There was a clear line between the people in the liberated Zones and the people in the cities. The latter were seen as having chosen to side with LON Nol and were therefore treated poorly later); *see also*, Section 3: Historical Background, paras 111-112.

[2499] Section 3: Historical Background, paras 111-112.

[2500] *See e.g. Revolutionary Youth*, July 1975, E3/724, p. 5, ERN (En) 00089739 (Even after Phnom Penh was liberated, the feudalist-capitalist environment, with modern materials, corrupted the youths and cadres, causing them to lose control and forget their revolutionary stance); *KHIEU Samphan Report* (in FBIS Collection), E3/273 6 January 1976, ERN (En) 00167813; Elizabeth BECKER Notes Regarding Conditions in Cambodia, E3/1171, 13-14 December 1978, p. 11, ERN (En) 00087864 (When BECKER told a Khmer Rouge cadre that she was in Phnom Penh during the war, he responded with disbelief, claiming that only traitors and spies were in Phnom Penh during the war); *see also*, Section 11: Movement of the Population (Phase Two), paras 613-616, 621-623.

[2501] Section 4: General Overview: 17 April 1975 - 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 736-737.

[2502] Section 10: Movement of the Population (Phase One), para. 477.

[2503] T. 30 January 2012 (NUON Chea), pp. 19-20.

[2504] Section 11: Movement of the Population (Phase Two), paras 576-577, 613; Section 14: Joint Criminal Enterprise, paras 770, 772.

[2505] French Embassy Telegram, Subject: POL Pot Press Conference, E3/1762, 6 October 1977, p. 2, ERN (En) 00751832; DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 46, ERN (En) 00003282.

14.2.2.2. *Justifications*

789. Based on experiences evacuating people between 1970 and 1975, POL Pot believed that the forced movement of inhabitants of urban areas were the only solution to the alleged, perceived and/or anticipated problems upon the liberation of Phnom Penh and other cities.[2506] IENG Sary,[2507] KHIEU Samphan,[2508] NUON Chea[2509] and POL Pot[2510] claimed that Phnom Penh and other urban centres were evacuated because refugees had increased the urban population dramatically by April 1975, there were resulting shortages of food, and there were no means of transporting food into the cities. They also asserted that enemy plots to overthrow the Khmer Rouge relied on the city population remaining where it was. If city people were not moved, then the food problem would not be solved and they, agitated by foreign agents, would rebel;[2511] LON Nol soldiers and foreign agents undercover among the

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[2506] IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 4, ERN (En) 00442664.

[2507] *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN S 00003654; U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary claimed that there were insufficient means to transport 30-40,000 tonnes of food into the capital so they would have to move the people to the food instead); French Foreign Ministry Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 28 January 1978, p. 4, ERN (En) 00389177 (The decision to evacuate Phnom Penh was due to the shortage of food); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603 (IENG Sary said they had to send the people to locations where there was food).

[2508] KHIEU Samphan Interview Transcript, E3/4048, undated, p. 1, ERN (En) 00790540, p. 2, ERN (En) 00790541 (It was impossible to transport rice from the country because the bridges and roads were damaged and there were not enough trucks); KHIEU Samphan Interview Transcript, E3/4051, undated, p. 1, ERN (En) 00788872 (The Standing Committee agreed to the evacuations because without them, people would starve).

[2509] T. 13 December 2011 (NUON Chea), p. 30 (Although food was not abundant anywhere, the situation was better in the countryside).

[2510] POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 4, ERN (En) 00750100 (POL Pot explained that one reason for the evacuation of the cities included economic considerations such as feeding millions. It was better to take them to the country and distribute them to the cooperatives).

[2511] *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN S 00003654; KHIEU Samphan Interview Transcript, E3/4048, undated, p. 1, ERN (En) 00790540, p. 2, ERN (En) 00790541 (People are not willing to lay down to await their death. Without food, they rebel); KHIEU Samphan Interview Transcript, E3/4045, undated, p. 1, ERN (En) 00790538 (In times of hardship, there could be resistance so the new people were divided. Only the base cadres, who had struggled during the war, understood the party lines and knew the principles of urgency and secrecy); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary also claimed that they discovered a document detailing a secret political military plan by the CIA and LON Nol to make trouble through their agents among the people if the Khmer Rouge was unable to solve the food problem); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603 (The Khmer Rouge uncovered a CIA plan to make trouble if the Khmer Rouge was unable to feed the people); *see also*, Section 3: Historical Background, paras 115, 159; Section 4: General Overview: 17 April 1975 - 6 January 1979, para. 169; Section 10: Movement of the Population (Phase One), paras 526, 531-533.

city people would seize any opportunity to rise up;[2512] and the influence of the old regime and cities would corrupt the Khmer Rouge cadres.[2513] NORODOM Sihanouk claimed that when he expressed his readiness to return to Phnom Penh on 17 April 1975, KHIEU Samphan replied that there was an epidemic in Phnom Penh which obliged the Khmer Rouge to evacuate the people to the countryside.[2514]

790. The Chamber has already dismissed these claimed justifications, specifically

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[2512] *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN S 00003654; T. 13 December 2011 (NUON Chea), p. 30 (If Phnom Penh had not been evacuated, it would have been difficult to deal with the LON Nol soldiers); KHIEU Samphan Interview Transcript, E3/4054, undated, p. 1, ERN (En) 00792447 (KHIEU Samphan learned later that CIA Director Frank SNEPP in Saigon said that the evacuations separated CIA agents in Cambodia); KHIEU Samphan Interview Transcript, E3/3196, undated, p. 4, ERN (En) 00815867 (KHIEU Samphan knew some agents of the Americans would remain after liberation, but they were shattered quickly. All people evacuated from the cities were treated as enemies); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary claimed that they discovered a document detailing a secret political military plan by the CIA and LON Nol to spread confusion after victory. Many had hidden arms and intended to attack); French Foreign Ministry Telegram, Subject: Situation in Cambodia: Mr. POL Pot Official Visit to China and North Korea, E3/484, 26 October 1977, p. 8, ERN (En) 00771187 (POL Pot said that the evacuations of townspeople after the fall of Phnom Penh and then again in the autumn of 1975 were to break up spy organisations); French Foreign Ministry Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 28 January 1978, p. 5, ERN (En) 00389178 (IENG Sary explained that LON Nol supporters would attempt to re-take power. These supporters were spread amongst the civilians in plain clothes; they would be easier to identify once they were moved to the rural areas); NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 9, ERN (En) 00329512 (The Military Committee chaired by POL Pot determined that the Americans were going to smash the Party in Phnom Penh and the people had to be evacuated so they would not be endangered by the war); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603 (Many surrendered LON Nol soldiers had hidden their arms and would attack after the Khmer Rouge took Phnom Penh); POL Pot Interview with Yugoslav Journalists, E3/5713, 20 March 1978, p. 4, ERN (En) 00750100 (POL Pot explained that one reason for the evacuation of the cities included defending the country against a plan by the U.S. and its lackeys to agitate and attempt to overthrow the Khmer Rouge after the revolution. The people were re-located to prevent the execution of this plan); *see also*, Section 10: Movement of the Population (Phase One), paras 526, 531-533.

[2513] *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN S 00003654; U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 2, ERN (En) 00413791 (IENG Sary also claimed that they discovered a document detailing a secret political military plan by the CIA and LON Nol to corrupt Khmer Rouge troops); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603 (The CIA planned to corrupt the Khmer Rouge troops and weaken their spirit with loose women, alcohol and money); *Revolutionary Youth*, July 1975, E3/724, p. 5, ERN (En) 00089739; *KHIEU Samphan Report* (in FBIS Collection), E3/273 6 January 1976, ERN (En) 00167813; *see also*, Section 10: Movement of the Population (Phase One), paras 526, 531-533.

[2514] NORODOM Sihanouk Declaration, IS 10.18, 28 March 2007, p. 1, ERN (En) 00662214. Although this document was not assigned an E3 number, it was put before the Chamber pursuant to Internal Rule 87 (T. 31 January 2013, p. 2). The KHIEU Samphan Defence objected to this document on 30 January 2013 (T. 30 January 2013, pp. 90-91). This objection was dismissed and the document was used by the Co-Prosecutors during a key document presentation hearing on 31 January 2013 (T. 31 January 2013, p. 30).

relating to the forced evacuation of Phnom Penh.[2515] The Chamber is also satisfied that these justifications do not demonstrate that the policy to evacuate cities and towns was based on civilian security or military necessity. The policy to evacuate cities forcibly, using deception,[2516] was taken pursuant to the Party's long-standing political line, focusing on agricultural production and based on the principles of self-reliance and collectivisation.[2517] The policy was not a reaction to any particular situation and was not proportionate or necessary, as demonstrated by the consistent and increasing pattern of transfers of city dwellers to the countryside implemented by the Khmer Rouge.[2518]

14.2.2.3. *Pattern*

791. One refugee claimed that, as early as 1972, Khmer Rouge forcibly transferred people seized or captured in areas controlled by the LON Nol regime to work in the rice fields in the liberated Zones.[2519] Between 1973 and 17 April 1975, people were forcibly evacuated from Kratie, Banam, Oudong, Kampong Cham,[2520] locations in Battambang,[2521] Svay Rieng[2522] and Prey Veng.[2523] During offensives on Phnom Penh, the Khmer Rouge forcibly moved residents of areas as they captured them, including those living near National Road No. 1 between Neak Loeung and Phnom

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[2515] Section 3: Historical Background, para. 156; Section 10: Movement of the Population (Phase One), paras 527-534.

[2516] T. 5 November 2102 (SUM Chea), p. 27 (The Khmer Rouge used deceitful tricks to evacuate Phnom Penh); T. 10 April 2013 (François PONCHAUD), pp. 24 (It was clear that the Khmer Rouge lied to people when evacuating them, this was normal), 56 (Angkar used lies to lure people to follow them, evacuate the cities and control the situation); T. 7 May 2013 (Philip SHORT), pp. 92-93 (Lies were the very fabric of everything the regime did).

[2517] Section 3: Historical Background, paras 106, 110, 115-116, 118; Section 4: General Overview: 17 April 1975 - 6 January 1979, para. 169; Section 14: Joint Criminal Enterprise, paras 726, 732, 734, 737-738, 754-755, 777.

[2518] Section 9: Applicable Law: Crimes Against Humanity, para. 450.

[2519] *Further Submission from the International Commission of Jurists under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/3327, 20 December 1978, p. 2, ERN (En) 00075939 (A refugee from Kampong Cham explained that the Khmer Rouge began evacuating people from conquered villages to work in the rice fields as early as 1971 and 1972).

[2520] Section 3: Historical Background, paras 104-109.

[2521] Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 4, ERN (En) 00087306 (The Khmer Rouge reached Ta Kriem, Battambang in 1974 and re-located families close to Phnom Sampeou).

[2522] KHEM Leng Interview Record, E3/5539, 28 August 2009, pp. 3-4, ERN (En) 00380123-4 (On 16 April 1975, the Khmer Rouge expelled all the people from Svay Rieng); LOEM Savon Interview Record, E3/5296, 18 July 2009, pp. 2-3, ERN (En) 00358145-46.

[2523] LANG Hel Interview Record, E3/5251, 14 October 2008, pp. 2-3, ERN (En) 00235494-95 (Before 17 April 1975, the people in Prey Veng provincial town were evacuated); BUN Buon Interview Record, E3/5508, 27 October 2009, p. 3, ERN 00403040.

Penh.[2524]

792. On 17 April 1975, the Khmer Rouge liberated Phnom Penh. They immediately began to evacuate the entire population forcibly, including the sick, young and old. In the process, families were separated; people were beaten and shot; and little, if any, food, water or other accommodations were provided. Under these conditions, some evacuees either committed suicide or died from a combination of exhaustion, malnutrition and/or disease. Meanwhile, Khmer Republic officials were assembled or identified, including at checkpoints, arrested, some led away and others killed on the spot.[2525]

793. On and after 17 April 1975, people were also forcibly displaced from various provincial towns throughout Cambodia, including Kampong Speu, Takeo, Kampot, Sihanoukville (previously, Kampong Som), Kampong Thom, Pailin, Kampong Cham, Kampong Chhnang, Siem Reap, Poipet, Battambang and Pursat.[2526] By May 1975, all population centres along National Road No. 5 to the Thai border had been emptied of their inhabitants.[2527] By at least June 1975, all population centres along National Road No. 6 between Prek Dam and Siem Reap had also been forcibly displaced.[2528]

794. Most of these urban evacuations undertaken pursuant to Party plans and policy followed a consistent pattern: people were forcibly evacuated from cities and towns under false pretexts, without concern for their well-being or their health, subjected to acts of terror and violence, and taken to work-sites and cooperatives for re-education

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[2524] U.S. State Department Telegram, Subject: Recent Movement of Khmer Refugees to Neak Loeung, E3/4185, 10 July 1974, p. 1, ERN (En) 00377045.
[2525] Section 10: Movement of the Population (Phase One), paras 504, 513, 515.
[2526] Section 4: General Overview: 17 April 1975 - 6 January 1979, paras 169-170.
[2527] U.S. State Department Telegram, Subject: Evacuation of Foreigners from Cambodia, E3/4147, 3 May 1975, p. 1-2, ERN (En) 00413469-70 (SCHANBERG and others arrived at the border. They saw no civilians in villages or towns along the route from Phnom Penh); U.S. State Department Telegram, Subject: American Talks of Phnom Penh After The Fall, E3/4148, 4 May 1975, p. 4, ERN (En) 00413478 (Kampong Chhnang, Pursat and Battambang towns and numerous villages were also deserted).
[2528] French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 3, ERN (En) 00517765 (Gen. SOR Buon fled through Kampong Thom, to Siem Reap and then north to Thailand. All population centres along the 400 kilometre stretch of National Road No. 6 between Prek Dam and Siem Reap had been evacuated); T. 20 March 2012 (KAING Guek Eav) pp. 72-73 (his brother in Law told him that at the time of the evacuation of Phnom-Penh the evacuation of Kampong Thom was prepared. People who were taken by cars were to be smashed, and people who were walked would live)

by labour and indoctrination.[2529]Immediately before, during or immediately after many of these evacuations, Khmer Republic officials were singled out for execution and arrest.[2530]

14.2.3. *Movement between Rural Areas*

14.2.3.1. *Policy*

795. Once evacuated from the cities and territories held by enemies or perceived enemies, the Khmer Rouge moved people within regions or from one region to another to allocate resources, according to their own estimates, based on labour requirements and production targets, as well as to advance the class struggle.[2531] Mobile units were used in each cooperative. This practice would continue until all cooperatives were able to provide their own labour force.[2532] The Party leadership believed that re-organisation of the labour force would address shortages of water and food, re-educate the 'New People', identify enemies among the ranks of the 'New People', and allow the Party to progress with its plan to evolve into a modern agricultural economy within 10-15 years and later into an industrial state.[2533]

796. In August 1975, the Standing Committee ordered that between 400,000 and

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[2529] François PONCHAUD Interview Record, E3/4591, 13 February 2009, pp. 1-2, 4, ERN (En) 00885114-5, 00885117 (There was a program to evacuate all cities, a precise plan devised beforehand. The same thing happened everywhere, for example, Battambang and Sihanoukville. The emptying of towns and cities was methodical); French Foreign Ministry Memo, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, p. 2, ERN (En) 00525812 (The population was systematically displaced – urban dwellers to the country, villagers to other villages – and was subject to a collectivised way of life nationwide); T. 19 July 2012 (David CHANDLER), pp. 60-61 (The repetitive pattern of forced evacuations reached its climax during the evacuation of Phnom Penh); T. 5 November 2012 (SUM Chea), p. 27 (The Khmer Rouge used deceitful tricks to evacuate Phnom Penh); T. 10 April 2013 (François PONCHAUD), p. 24 (It was clear that the Khmer Rouge lied to people when evacuating them, this was normal), 56 (Angkar used lies to lure people to follow them, evacuate the cities and control the situation); T. 7 May 2013 (Philip SHORT), pp. 92-93 (Lies were the very fabric of everything the regime did); U.S. State Department Telegram, Subject: Recent Movement of Khmer Refugees to Neak Loeung, E3/4185, 10 July 1974, p. 1, ERN (En) 00377045 (Evacuations of areas captured during the offensive on Phnom Penh were followed by political indoctrination and forced labour, farming and fishing to support the Khmer Rouge); *see also*, Section 3: Historical Background, paras 104-118, 153; Section 4: General Overview: 17 April 1975 - 6 January 1979, paras 169-170; Section 10: Movement of the Population (Phase One), paras 465-475, 481-498.

[2530] Section 3: Historical Background, paras 120-127; Section 4: General Overview: 17 April 1975 - 6 January 1979, paras 172, 197; Section 10: Movement of the Population (Phase One), paras 505-509, 511, 513-515; Section 14: Joint Criminal Enterprise, paras 814-836.

[2531] Section 11: Movement of the Population (Phase Two), para. 576.

[2532] Section 11: Movement of the Population (Phase Two), para. 581.

[2533] Section 11: Movement of the Population (Phase Two), paras 585-586, 602, 604, 613.

500,000 people be moved to Battambang Province (Northwest Zone).[2534] The Party leadership also ordered the movement of 20,000 to Preah Vihear (Sector 103) and others to Kampong Thom (Central (old North) Zone).[2535] It was decided that the less fertile areas in the over-populated Southwest, West and East Zones would provide the manpower for Sector 103, the Northwest and Central (old North) Zones.[2536] The production target was three tonnes of rice per hectare.[2537] Further, the CPK leaders considered that 'New People' had to be moved and separated as enemy agents were still mixed amongst them.[2538]

797. In late 1976, the Party set the new production target for 1977 at three tonnes per hectare and six tonnes per hectare in those areas that could support both a rainy and dry season rice crop.[2539] In the face of drought in 1977, the construction of dikes, canals and dams was of special importance.[2540] Further, the Party ordered that the people be classified into various categories, including "full rights" (base people from cooperative), "candidates" (base people who were well-off prior to 1975) and "depositees" (17 April people) to prevent any confusion in gathering and distributing labour.[2541]

798. Over the course of the DK era, Zone secretaries and officials reported to POL Pot, NUON Chea, VORN Vet, SON Sen, Doeun and/or Office 870 on population movements, sometimes requesting further instructions.[2542]

[2534] Section 11: Movement of the Population (Phase Two), para. 586.
[2535] Section 11: Movement of the Population (Phase Two), para. 586.
[2536] Section 11: Movement of the Population (Phase Two), para. 587.
[2537] Section 11: Movement of the Population (Phase Two), para. 604.
[2538] Section 11: Movement of the Population (Phase Two), para. 613.
[2539] Section 11: Movement of the Population (Phase Two), para. 610.
[2540] Section 11: Movement of the Population (Phase Two), paras 610-612.
[2541] Section 11: Movement of the Population (Phase Two), para. 621.
[2542] Section 11: Movement of the Population (Phase Two), para. 586 (In particular, concerning the transfers at the end of 1977 in the East Zone and the November 1975 attempted transfer from the East Zone); T. 20 March 2012 (KAING Guek Eav), p. 38, ERN (Fr) 00793088 (In November 1975, SAO Phim reported to POL Pot and NUON Chea concerning the evacuation of people rejected by KE Pauk); T. 3 September 2012 (NORNG Sophang), pp. 45-46 (NORNG Sophang affirmed that this telegram was also sent to NUON Chea because its author must have known it should be sent to "the person who was in charge of people like NUON Chea to find a solution"); DK Telegram, E3/1188, 29 January 1976 (Buth to Respected Brother, copying Brother NUON, reporting that people who were evacuated from Laos were sent to live in four villages in Commune 3); DK Telegram, E3/243, 19 January 1978 (SAO Phim (Chhon) to Brother Pa and copying, among others, Uncle NUON, reported on fighting in Sectors 23 and 24 and how they had retrieved a large number of people who were herded by the Yuon enemy to be under their temporary control and organized to have them returned to the rear for re-education,

14.2.3.2. *Justifications*

799. Party leaders and publications suggested that movements between rural areas were undertaken on the basis of civilian security and military necessity.[2543] The Chamber has already dismissed this justification in relation to those movements included within the scope of movement of population (phase two). It has also found that regardless of the truth of these justifications, these transfers were neither proportional, nor necessary.[2544] The Chamber is also satisfied that these justifications and excuses do not demonstrate that there was a policy to move people between rural areas on the basis of civilian security or military necessity. The steady and pre-established nature of the policy demonstrates that it was not a contemporaneous reaction to any concern based on civilian security or military necessity raised by a particular situation and therefore could not have been tailored pursuant to the principles of necessity or proportionality.[2545] The unnecessary and disproportionate nature of the resulting evacuations is further demonstrated by a consistent pattern of conduct.

14.2.3.3. *Pattern*

800. From 1972, and possibly earlier, people were relocated within Khmer Rouge controlled territory in order to build and expand cooperatives, allocate labour forces depending on the season and separate them from the enemy.[2546] The Khmer Rouge organised mobile units, consisting of civilians and/or cadres who had been separated from their families, to assist in rice farming and infrastructure projects, such as dams,

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grouping and screening); DK Telegram, E3/898, 11 December 1977 (Se to Committee 870, and copying Uncle NUON, stated that Siem Reap District comprises 40,000 people, mainly 'New People' who are to be distributed to other Districts).

[2543] Section 11: Movement of the Population (Phase Two), para. 634.

[2544] Section 11: Movement of the Population (Phase Two), para. 635.

[2545] Section 9: Applicable Law: Crimes Against Humanity, para. 450.

[2546] ROCHOEM Ton *alias* PHY Phuon Interview Record (DC-Cam), E3/5815, 19 December 2010, pp. 2-3, ERN (En) 00660622-3 (In 1968 and 1969, the Khmer Rouge organised the rice-growing movement using mobile brigades and villagers); KHO Vanny Interview Record (DC-Cam), E3/4660, 22 September 2005, p. 1, ERN (En) 0089756 (Evacuees would be sent to the cooperatives which had been built since 1973 and these would be able to take care of people); T. 6 May 2013 (Philip SHORT), pp. 91-92; POV Sinuon Interview Record, E3/5545, 29 September 2009, p. 3, ERN (En) 00387500 (In 1973, the Khmer Rouge evacuated POV Sinuon and family, within Khmer Rouge territory, from Rumlech Village to Kaoh Khcheay, both in Pursat Province, "to escape the attack of LON Nol's soldiers"); *see also*, Section 3: Historical Background, para. 113.

bridges and roads.[2547]

801. During the DK era, the Khmer Rouge continued the same types of movements for the same reasons, but on a larger scale. Many of those displaced from the cities and towns in mid-April 1975 were continuously relocated. Their movement was still underway as late as July and August 1975 when the rice transplanting season began.[2548] Having set up the central government in Phnom Penh, in late 1975, the Central and Standing Committees, including NUON Chea, POL Pot, IENG Sary and KHIEU Samphan, began to turn their attention to making strategic use of these masses expelled from cities and towns.[2549]

802. Beginning in September 1975 and continuing into early 1977, hundreds of thousands of people were displaced from Kampong Speu, Kandal, Takeo, Prey Veng, Svay Rieng, Kampong Cham and Kampong Chhnang Provinces to Battambang, Pursat, Preah Vihear and Kampong Thom Provinces.[2550] In addition to the large-scale relocation from south to north, tens of thousands of people were also moved by various means within regions between late 1975 and December 1977, for example within and between Battambang, Pursat, Kratie, Kampot, Takeo, Kandal, Kampong Speu, Kampong Chhnang, Prey Veng, Svay Rieng, Kampong Thom, Kampong Cham and Mondulkiri Provinces.[2551]

803. Over the course of these evacuations, a consistent pattern of conduct emerged. Often, 'New People' were targeted for displacement. People were steadily forced,

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[2547] T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 4-5 (Cadres in mobile forces were engaged in rice farming); ROCHOEM Ton *alias* PHY Phuon Interview Record (DC-Cam), E3/5815, 19 December 2010, pp. 2-3, ERN (En) 00660622-3; KHORN Brak Interview Record, E3/509, 8 January 2009, p. 2, ERN (En) 00282215 (He was in a mobile unit in 1972); KHUN Kim Interview Record, E3/360, 13 April 2008, p. 3, ERN (En) 00268854 (In late 1974, he was assigned to a mobile unit in Touk Meas where he built bridges and roads); CHAN Khan Case 001 Transcript, E3/2980, 21 April 2009, p. 90, ERN (En) 003213207 (Duch ordered him in 1973 or 1974 to farm land to the west of Trapeang Preal); CHEA Phan Interview Record, E3/5143, 12 December 2007, p. 2, ERN (En) 00223618 (In 1973, she was assigned to a mobile unit in Svay Rieng where she worked on canals and dams); SAOM Thoeun DC-Cam Interview, E3/5596, 17 June 2004, p. 6, ERN (En) 00778975 (In 1974 or 1975, she was put in a mobile unit in Kampot Province to build dams); NORNG Nan Interview Record, E3/4640, 22 April 2008, p. 2, ERN (En) 00272322 (In 1973, he was assigned to a mobile unit digging canals "everywhere").

[2548] Section 11: Movement of the Population (Phase Two), para. 584.

[2549] Section 11: Movement of the Population (Phase Two), paras 576, 584; Section 14: Joint Criminal Enterprise, para. 782.

[2550] Section 11: Movement of the Population (Phase Two), para. 607.

[2551] Section 11: Movement of the Population (Phase Two), paras 584-588.

coerced or deceived to move. Thereafter, many people walked, regardless of the distance, or were transported in crowded boats, trucks or trains. They were provided little, if any food, water or accommodation, both during the movement or on arrival at their destination. Many died of illness, starvation and/or exhaustion. Others were shot by their Khmer Rouge guards or disappeared.[2552]

14.2.4. *Legal Findings*

804. The Trial Chamber is satisfied, based on the evidence put before it in Case 002/01, that the existence of a joint criminal enterprise has been established. First, the evidence establishes that a plurality of persons, including the leaders of the CPK, shared a common purpose to implement a socialist revolution in Cambodia.[2553] Second, it has also been established that while this common purpose was not criminal in itself, the policies formulated by the Khmer Rouge involved the commission of a crime as a means of bringing the common plan to fruition. These policies resulted in and/or involved the commission of crimes, including forced transfers, murders, attacks against human dignity and political persecution. Both population movements (phases one and two), followed a consistent pattern of conduct in each case including and involving the commission of crimes. This confirms that these policies were criminal and had been adopted beforehand in order to ensure that the common purpose would be achieved.

805. In particular, the forced transfers committed by Khmer Rouge officials and soldiers during movement of population (phases one and two) were undertaken pursuant to the Party leadership's express instructions, decisions and policy. Further, they were carried out as part of a pattern of forced transfers, under inhumane conditions and without regard for the well-being or the health of the people being moved. Murders and attacks against human dignity resulted from the inhumane conditions of the transfers, terror-inducing acts of Khmer Rouge cadres and the exercise of force. Party policy intended that such suffering and sacrifice would re-educate the 'New People' and attack the class system. On this basis, 'New People' were persecuted on political grounds. Finally, during phase one, acts of murder and

[2552] Section 11: Movement of the Population (Phase Two), paras 591-599.
[2553] Section 14: Joint Criminal Enterprise, para. 777.

political persecution targeted former Khmer Republic officials, a group deemed by the Party's policy to be incompatible with efforts to build and defend the country. These crimes were undertaken pursuant to Party policy to eliminate these enemies and formed part of an ongoing pattern of such arrests and executions which immediately preceded, occurred during, or immediately succeeded displacement.

806. As discussed below, the Chamber is also satisfied that the crimes committed during population movement (phase one) and population movement (phase two) can be imputed to participants in the JCE who, when using a direct perpetrator, acted to further the common purpose.[2554]

807. Members of the Central Committee, some of whom were also members of the Standing Committee met in June 1974 and decided to evacuate Phnom Penh. Members of the Central and Standing Committees confirmed this decision in February and early April 1975. The orders were passed on by those who attended the meetings, including Ta Mok. SON Sen chaired a committee, including KOY Thuon, tasked with managing the evacuation. Further, the military forces that attacked Phnom Penh were under the command of Zone secretaries including SAO Phim, KOY Thuon, Ta Mok and VORN Vet. They sought and received instructions from POL Pot, NUON Chea, SON Sen and other senior leaders at B-5. The Chamber is therefore satisfied that the crimes committed during movement of population (phase one) can be imputed to various participants in the JCE including, at least, some Central and Standing Committee members such as POL Pot, Ta Mok, SON Sen, SAO Phim, VORN Vet and KOY Thuon.

808. Movement of population (phase two) commenced with the Standing and Central Committees' decisions to move people from southern Cambodia to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom (Central (old North) Zone) and Preah Vihear (Sector 103). Later instructions and policies concerning the allocation of labour, production targets and infrastructure priorities were determined by the Party leadership, including the Standing and Central

[2554] Section 13: Applicable Law: Individual Criminal Responsibility, para. 693; *see also, Krajišnik* Appeal Judgement, para. 226 (A sufficient link exists when a JCE member explicitly or implicitly requested a non-JCE member to commit a crime, or instigated, ordered, encouraged or otherwise availed himself of the non-JCE member to commit the crime forming part of the common purpose).

Committees. Instructions from the Centre[2555] concerning these issues were passed to the secretaries of the Zones and Autonomous Sectors in, from and to which people were moved during phase two. These included ROS Nhim (Northwest), SAO Phim (East), Ta Mok (Southwest), KOY Thuon (Central (old North) Zone, until late 1975), KE Pauk (Central (old North) Zone, from late 1975), CHANN Sam (North Zone, from its creation in or around 1977), CHOU Chet (West Zone), BOU Phat (Sector 103), YONG Yem (Sector 505, until 1976) and BORN Nan (Sector 505, from 1976).

809. During phase two, once assembled, some people were moved by train under the guard of Khmer Rouge soldiers from Phnom Penh. The Centre military fell under the command of SON Sen and the General Staff, from his appointment as Minister of Defence in August 1975. The Commerce Committee (under KOY Thuon from October 1975, until his arrest later that year) was also involved in arranging the transportation of people from at least September 1975. Further, railway cadres answered to the Train Unit in Phnom Penh. From October 1975, VORN Vet was responsible for "industry, railroads and fisheries". From at least April 1976, the Train Unit was under the control of the Communications and Transportation Committee headed by MEY Prang. Both the Commerce and Communications and Transportation Committees fell under the DK Ministry of Economics headed by VORN Vet from his appointment to that position in April 1976.

810. The Chamber is therefore satisfied that transfers from the Southwest, West, East and Central (old North) Zones to the Northwest and Central (old North) Zones, Sectors 103 and 505, as well as within the Northwest, East and Central (old North) Zones, can be imputed to participants in the JCE including, at least, some members of the Central and Standing Committees, government ministers, and Zone and Autonomous Sector secretaries, such as VORN Vet, MEY Prang, SON Sen, KOY Thuon, KE Pauk, CHANN Sam, CHOU Chet, Ta Mok, ROS Nhim, SAO Phim, BOU Phat, YONG Yem and BORN Nan.

[2555] Section 5: Administrative Structures, paras 223, 265; Section 6: Communication Structure, paras 280, 286.

14.3. The Targeting Policy

811. According to the Closing Order, the objectives of the Targeting Policy, as limited in Case 002/01, included establishing a homogenous society without class divisions, and eliminating enemies.[2556] The Closing Order alleges that a pattern of targeting Khmer Republic officials, including civil servants, former military personnel and their families, began before 1975 and continued until at least 6 January 1979.[2557]

812. The Closing Order as a whole charges the Accused with murder, extermination and political persecution through execution as crimes against humanity for crimes allegedly committed at Tuol Po Chrey.[2558] However, it appears from a reading of only those parts of the Closing Order within the scope of Case 002/01 and in particular those relevant to the implementation of the Targeting Policy, that the Accused are not charged for having committed through a JCE the crime of persecution on political grounds in connection with executions of former Khmer Republic officials at Tuol Po Chrey.[2559] The Chamber will therefore not consider whether this particular crime was committed under such mode of liability.

813. In Case 002/01, the Chamber limited its consideration of the Targeting Policy to the crimes charged in connection with executions of former Khmer Republic officials at Tuol Po Chrey.[2560] However, executions at Tuol Po Chrey are explicitly linked in the Closing Order to the third policy concerning the re-education of bad elements and killing of enemies.[2561] This policy was not included within the scope of Case 002/01.[2562] Although Internal Rule 98(2) limits the judgement to the facts set out

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[2556] Closing Order, para. 207.
[2557] Closing Order, paras 205-206, 208-209.
[2558] Closing Order, paras 1416-1418.
[2559] Closing Order, para. 1525(iv); Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.
[2560] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.
[2561] Closing Order, paras 178, 698-714 (The factual allegations fall under Section VIII(C) of the Closing Order which addresses the implementation of the third policy concerning re-education of bad elements and execution of enemies).
[2562] Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial

in the Closing Order, the Trial Chamber is not bound by the Co-Investigating Judges' factual analysis in the Closing Order which explicitly links a specific JCE policy to the relevant charged crimes.[2563] In addition, the Chamber notes that both the Targeting Policy and the third policy, at least partly, had a common purpose which was either to "eliminate enemies" or "the killing of enemies". Thus, although executions at Tuol Po Chrey are not explicitly linked to the Targeting Policy in the Closing Order, they are an example of the general pattern of targeting Khmer Republic officials identified under the Targeting Policy.[2564] Taking into account the nature of the charges concerning the executions at Tuol Po Chrey, the Accused therefore had adequate notice of them. Within the scope of Case 002/01, the Chamber will consider whether, with regard to the Targeting Policy, a JCE existed which resulted in the commission of the crimes of murder and extermination at Tuol Po Chrey.

14.3.1. ***Policy***

814. The Chamber has already found that the Khmer Rouge had a policy to target Khmer Republic officials before 1975.[2565] As set out below, this policy continued throughout the DK era and, in particular, during the time period relevant to Case 002/01.

815. According to NUON Chea, communism mandates the elimination of those who pose threats to the country and those who cannot be (re)educated.[2566] This included Khmer Republic officials whom the Party leadership believed never gave up their strategy to embed agents and cause rebellion no matter how many times they were defeated.[2567] Beginning before 17 April 1975 and continuing at least into 1976, the

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Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

[2563] *KAING Guek Eav* Appeal Judgement, paras 128, 163.

[2564] Closing Order, para. 206, fn. 698 (Citing the Interview Record of SUM Alat (E3/4637) concerning executions at Tuol Po Chrey).

[2565] Section 3: Historical Background, paras 118, 120-123.

[2566] T. 13 December 2011 (NUON Chea), pp. 42, 45.

[2567] DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 86, ERN (En) 00003322 (The elimination of the "lackeys" of the capitalists, feudalists and imperialists proved a great success. Nevertheless, the enemy met with serious defeats and never gave up trying to embed agents to cause internal rebellion); DK Document: *Abbreviated Lesson on the History of the Kampuchean Revolutionary Movement Led by the CPK*, E3/1, undated, p. 9, ERN (En) 00000372 (Filth of the former classes remained unresolved and remnants of the original classes still exist); *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN S 00003654 (IENG Sary said that the Khmer

Party leadership considered Khmer Republic officials to be the primary enemy.[2568] Both KHIEU Samphan and IENG Sary maintained that the people and cadres had a deep hatred of Khmer Republic leaders, knew of their "true nature" and were therefore constantly on "revolutionary alert".[2569] KHIEU Samphan further asserted that, in avoiding foreign interference, the Khmer Rouge had learned a key lesson after the U.S. entered Cambodia via the LON Nol coup of 18 March 1970. By killing enemies, the Khmer Rouge leadership hoped to prevent another foreign invasion.[2570] Thus the Khmer Rouge leadership sought to eliminate all "remnants" of the former feudalist, imperialist and capitalist regimes[2571] throughout the DK era.[2572]

Rouge thought there would be trouble introducing enemy soldiers into KR ranks and that they would oppose them. In September 1975, KHIEU Samphan alleged at a Peking banquet that, in addition to subversive and disruptive activities, the U.S. and its "lackeys" were persisting in a vile propaganda campaign against Cambodia in a vicious attempt to hamper its reconstruction); KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, p. 16, ERN 00644939 (Enemies were still carrying out attempts to destroy the results of the revolution); DK Telegram, E3/1024, 23 September 1976, p. 1, ERN (En) 00185551 (Enemies whipped up the people to oppose cooperatives); *Revolutionary Youth*, E3/146, August-September 1974, ERN (En) 00538746 (Feudalist-aristocrat refers to the ruling feudalist group and includes the king and high rank officials such as minister, provincial governor, and district governor down to the commune chief and Chumtub clerk); *Revolutionary Youth*, E3/146, August-September 1974, p. 15, ERN (En) 00538746 (Feudalist-aristocrat refers to the ruling feudalist group and includes the king and high rank officials such as minister, provincial governor, and district governor down to the commune chief and Chumtub-clerk); *Revolutionary Flag*, E3/5, August 1975, ERN (En) 00401486-87 ("All of these persons are the new peasants who came from the petty bourgeoisie, the feudalists, and the capitalists…they continue to be in conflict with the revolution"); CPK Document: *Sharpen the Ideology of the Proletarian Class Until It Becomes Very Sharp and Strong*, E3/138, undated, ERN (En) 00743798 (There is still a contradiction with those in the feudalist class, including the landowner and aristocrat (namely commune chief, District governor, provincial governor, civil servant, police and soldier); *see also*, DK Notebook: *Social Class Structure, Social Conflict and Social Class Struggle in Cambodian Society*, E3/1233, undated, pp. 3, ERN (En) 00711613 (The feudal class of nobles encompasses the royal family and high-ranking officials who are powerful, including the King, provincial governors and District governors), 4, ERN (En) 00711614 (The petty bourgeoisie class also included civil servants), 8, ERN (En) 00711618 (The police and soldier class are a special class who use weapons to serve the dictatorship, they are the tool of the armed forces of class enemy and are 'absolutely reactionary').

[2568] DK Foreign DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 18, ERN (En) 00003254; *see also*, Section 3: Historical Background, paras 121-123; Section 11: Movement of the Population (Phase Two), para. 613.

[2569] KHIEU Samphan Interview Record, E3/3198, undated, p. 12, ERN (En) 00815887 (The masses had a strong sense of nationalism and firmly hated LON Nol who sold the country to Americans); IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 47, ERN (En) 000798113 (The people and Revolutionary Army were alerted to the true nature of the aggressive and annexationist, cruel and treacherous American imperialists and their lackeys who were the enemies of the people. The people were constantly on revolutionary alert); T. 13 December 2011 (KHIEU Samphan), p. 95 (The people were hopeless about LON Nol, tired of cruelty and crimes and anarchic activities); *see also*, Section 3: Historical Background, paras 112, 121.

[2570] KHIEU Samphan and NUON Chea Interviews by Meng-Try EA and Sopheak LOEUNG, E3/108 (also available at E3/122), 9-11 June 2006, p. 6, ERN (En) 00000930.

[2571] DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 20, ERN (En) 00003256 (Enemies had to be reduced to a minimum so that they could not isolate the Khmer Rouge); T. 7 May 2013 (Philip

816. During a meeting in June 1974, at which the Central Committee planned the final offensive to liberate the country, NUON Chea, POL Pot, KHIEU Samphan, Zone, Sector and military leaders discussed the Party's experience at Oudong, where Khmer Republic officials were executed en masse. Having considered this prior 'success', the Party leadership decided on its strategy for the final offensive. This plan was affirmed during meetings in early April 1975.[2573]

817. Additionally, there is overwhelming evidence that the policy to target former Khmer Republic officials was expressly ordered and affirmed by the Party leadership during the final offensive to 'liberate the country' and then throughout the DK era.[2574] After the liberation of Pursat around 17 April 1975, the Northwest Zone Committee ordered that former Khmer Republic officials be assembled and killed.[2575] According

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SHORT), p. 38 (There was a "take no prisoner" policy from the beginning); T. 9 May 2013 (Philip SHORT), p. 2 (He concluded that there was policy to target Khmer Republic officials based on a pattern of incidents); T. 8 May 2013 (Philip SHORT), pp. 99-100 (SHORT was convinced of a policy to target and execute Khmer Republic officials because it happened everywhere); T. 2 May 2012 (PEAN Khean), p. 51 (LON Nol and his soldiers were enemies and if they were arrested, they would be smashed); KHIEU Samphan Interview, E3/203, 1981, p. 16, ERN (En) 00424011 (LON Nol still maintained roots in Cambodian society due to the systematic structure of the government and army, but these roots eroded gradually); T. 10 April 2013 (François PONCHAUD), p. 30 (In 1975, the Khmer Rouge aimed to destroy all who worked for the Americans and the LON Nol regime); French Foreign Ministry Telegram, Subject: Cambodia, E3/2719, 28 April 1975, pp. 1-2, ERN (En) 00504006-7 (GRUNK Minister of Foreign Affairs, SARIN Chhak, said that there could be no continuity between the old and new regimes and that it was appropriate to erase the past completely); Party Representative Speech on the 17th Anniversary of the CPK, E3/145, 30 September 1977, p. 30, ERN (En) 00715074; Statement by KHIEU Samphan, HOU Yun and HU Nim, E3/637, January 1973, pp. 1-2, ERN (En) 00740931-2 (The Khmer Republic regime had to be dismantled); *see also*, Section 11: Movement of the Population (Phase Two), paras 613, 616.

[2572] POL Pot Speech at the 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, pp. 6-7, 9, ERN (En) S 00012702-3, S 00012704 (From April 1975 on, there was a period of struggle for national defence; it's been a fight against the imperialists and their lackeys); *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/200, 15 April 1977, pp. 1-2, 6, ERN (En) S 00004164-5, S 00004169 (Must constantly maintain the spirit of revolutionary vigilance and continue to fight and suppress all enemies).

[2573] Section 3: Historical Background, paras 143-147.

[2574] *See e.g.* KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, p. 4, ERN (En) 00293365 (In May 1975, SON Sen gave an order to arrest high-ranking civil servants and soldiers of the LON Nol regime); U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 24, ERN (En) 00443170 (Reports that a Khmer Rouge order went out to kill all army officers and civilian officials of the LON Nol government); *Further Submission from the International Commission of Jurists under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/3327, 20 December 1978, p. 2, ERN (En) 00075939 (It was a decision of the Central Committee to wipe out former Khmer Republic officials in 1975 and 1976); IENG Phan Interview Transcript, E3/419.1, 23 November 2009, p. 2, ERN (En) 00912383 (He was instructed to look for LON Nol soldiers); T. 11 July 2013 (Stephen HEDER), pp. 60-61 (Beginning in the latter half of 1976, the security services received signals from the Party leadership that they had to augment their efforts to identify former Khmer Republic officials who had escaped).

[2575] Section 12: Toul Po Chrey, paras 662-663.

to IENG Sary, around 20 April 1975, there was also a decision of the Party Centre to kill former Khmer Republic officials to ensure that it was impossible for them to stage a counter-revolution.[2576] On 4 June 1975, Comrade Pin of the Special Zone ordered the execution of 17 former Khmer Republic officials whom the Party had decided to "smash"; identified members of their families as "traitors"; and "asked" all cadres "to implement this policy of the Party".[2577] During a meeting in September 1976, Khmer Rouge military Division 164, after being informed by Brother 89 (SON Sen) of imperialist attack plans, was ordered to continue collecting biographies and rounding up "soldier elements".[2578] Following similar instructions from "Angkar", various Zone, Sector and District officials reported in 1976, 1977 and 1978 that further "remnants" of the former regime, including officials, soldiers, police and their family members, had been identified, arrested and/or eliminated. Some of these reports were addressed or copied to POL Pot, IENG Sary, NUON Chea, VORN Vet and/or SON Sen and to Office or Committee 870.[2579]

818. The Party's policy concerning "enemies" was disseminated through

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[2576] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 8, ERN (En) 00417606.
[2577] Execution Order, E3/832, 4 June 1975, p. 2, ERN (En) 00068915.
[2578] Division 164 Meeting Minutes, E3/813, 9 September 1976, p. 3, ERN (En) 00143487; *see e.g.* KAING Guek Eav Inverview Record, E3/5762, 18 February 2008, ERN (En) 00164329.
[2579] DK Telegram, E3/511, 2 April 1976, p. 1, ERN (En) 00182658 (KE Pauk reported to POL Pot, NUON Chea and SON Sen on the enemy situation in the North Zone, including former soldiers posting pictures of LON Nol and his announcement of 18 March 1970); Report to Tram Kak District, E3/4141, 30 April 1977 ("After the consecutive instructions were provided by the Angkar to be cautious with the enemies and to sweep cleanly away the enemy ranking soldiers, the following names have been tracked and found"); DK Telegram, E3/1144, 5 September 1977, pp. 1-2, ERN (En) 005179243-4 (Sector 801 reported to POL Pot, NUON Chea, IENG Sary, VORN Vet and SON Sen that former officials, police and soldiers had been identified and only a few remained undercover); DK Telegram, E3/995, 19 March 1978, p. 1, ERN (En) 00185583 (POL Pot, IENG Sary, NUON Chea and VORN Vet received a report concerning undercover enemy "remnants" including police, soldiers and civil servants who had disguised themselves as new people. They had been discovered, some "swept" away and the rest fled); DK Telegram, E3/996, 19 March 1978, pp. 1-2, ERN (En) 00436995-6 (The North Zone Secretary reported to 870, copying POL Pot, NUON Chea, IENG Sary and VORN Vet, that enemy remnants were re-emerging and were being systematically purged, although some police, soldiers and government officials escaped); DK Letters of Confirmation, E3/2450, 17-19 September 1977, p. 1, ERN (En) 00322161 (Informing Ann that two 1st lieutenants and one 2nd lieutenant were brought to Ann because it was decided by the party due to their ranks; they were arrested because they were high-ranking), p. 2, ERN (En) 00322162 (A 2nd lieutenant and two members of the air force were brought to Ann because Angkar decided that they should be), p. 3, ERN (En) 00322163 (According to the advice of Angkar, the widow of a Lieutenant-Colonel was arrested, she had said things were easier under the former regime); Commune Reports, E3/2048, 28 March-8 May 1977, p. 4, ERN (En) 00276565 (Requesting to send former soldiers to a security centre); DK Reports, E3/4103, 11 April 1977, p. 4, ERN (En) 00322133 (With high commitment to destroy and smash the enemy "to its total extinction", ranking former officials would be sent to the District and advice was requested as to other former soldiers and teachers).

indoctrination sessions conducted by Party leaders, including NUON Chea and KHIEU Samphan,[2580] and in issues of *Revolutionary Flag* and *Revolutionary Youth*,[2581] which would also then praise the elimination of enemies, including former Khmer Republic officials.[2582] Witness PECH Chim, Tram Kak District Secretary, attended a month-long study session in December 1975 for District secretaries where NUON Chea instructed around 800 people on the topic of enemies. PECH stated that without NUON Chea's instructions "people would never know how to identify enemies from friends".[2583]

14.3.2. *Justifications and Denials*

819. Before the liberation of Phnom Penh and throughout the DK era, the Khmer Rouge rebutted concerns and deflected attention from its policy to target Khmer

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[2580] T. 1 July 2013 (PECH Chim), p. 37 (At these study sessions they received instructions to assess, track, capture, and 'smash', that is eradicate or kill, the enemy); T. 23 August 2012 (EM Oeun), pp. 79-85, 86-87; T. 27 August 2012 (EM Oeun), pp. 27-28; T. 3 July 2013 (EK Hen), pp. 40-48, 63, 78-99; T. 20 September 2012 (CHEA Say), pp. 32-37, 71; T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 75-78; T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), pp. 95-96; T. 6 May 2013 (Philip SHORT), pp. 74-75; *see also*, Section 7: Roles and Functions – Nuon Chea, para. 325; Section 8: Roles and Functions – Khieu Samphan, para. 379.

[2581] *Revolutionary Flag*, E3/742, April 1977, ERN (En) 00478496 (Must be constantly on the offensive against enemies, striking and trampling them so they cannot raise their heads), 00478501 (It is imperative to purge, to clean up, and to sweep clean the no-good elements and the enemy elements), 00478502 (CIA, the KGB and their agents and their running dogs must be unmasked and permanently cleaned); *Revolutionary Flag*, E3/135, June 1977, ERN (En) 00446861-62 (Constantly attack the class enemies, embedded enemies and their agents); *Revolutionary Youth*, E3/726, February 1978, p. 7, ERN (En) 00278714 (Revolutionary vigilance must be raised, as all types of enemies seek the opportunity to destroy the revolution); *Revolutionary Flag*, E3/727, May - June 1978, ERN (En) 00185342 (Our duty is therefore is to attack absolutely, smash the enemy to smithereens, scatter them to the winds and liquidate them), 00185343 (We must see the enemy's face clearly, sweep them cleanly away, and sweep again and again ceaselessly, so that our Party forces are pure); *see also*, Section 6: Communication Structure, paras 261-266; Section 11: Movement of the Population (Phase Two), para. 577.

[2582] *Revolutionary Flag*, E3/5, August 1975, ERN (En) 00401497 (After several months of fighting and sweeping them away, the enemy was smashed); *Revolutionary Flag*, E3/759, April 1976, ERN (En) 00517853 (After 'liberating' Phnom Penh imperialist ringleaders were all expelled, their servants of every type were liquidated permanently and disappeared. This is the first result of the Great, Magnificent Victory); *Revolutionary Flag*, E3/5, August 1975, p. 7, ERN (En) 00401482 (We fundamentally eliminated exploitive production contacts. In type I liberated Zones, they were totally eliminated. In the type II liberated Zones, in general, they were fundamentally eliminated. The businessmen and pawnbrokers were totally gone); *Revolutionary Flag*, E3/746, July 1978, ERN (En) 00428291-97, 00428301-02 (The concealed enemies boring from within were exposed. We were able to maintain and protect the revolutionary forces and expand the revolutionary forces, to purge the bad elements, and continue leading the masses in struggle and to gain further victories), 00428303 (Even more particularly, in the great mass movement to attack and smash…bringing about a strategic victory for the nation, the people, the Party and the revolution); *see also*, Section 6: Communication Structure, paras 261-266; Section 11: Movement of the Population (Phase Two), para. 577.

[2583] T. 1 July 2013 (PECH Chim), pp. 38-41.

Republic officials by claiming that only the seven 'super traitors' would be killed and by encouraging Khmer Republic officials to leave the country (Section 14.3.2.1). It claimed that the war between the Khmer Rouge and the "imperialists" continued citing American attacks, such as the *Mayaguez* incident and the bombing of Siem Reap (Section 14.3.2.2), and it maintained that Khmer Republic soldiers had not been killed, but instead had been sent to the countryside along with other 'New People' (Section 14.3.2.3). Below, the Chamber considers each of these justifications and denials insofar as they may demonstrate the existence or otherwise of a policy to target former Khmer Republic officials.

14.3.2.1. *FUNK/GRUNK Declarations*

820. In December 1974, NORODOM Sihanouk, seemingly without consulting the Khmer Rouge, declared that GRUNK would grant amnesty to Khmer Republic soldiers and officials who realised their mistakes and joined FUNK.[2584] The Chamber has already found that NORODOM Sihanouk had no power to enforce such promises and no control over what was happening in the country.[2585] In March 1975, FUNK issued a statement, allegedly following a late February 1975 National Congress chaired by KHIEU Samphan,[2586] which proclaimed that Khmer Republic officials had the right to join FUNK provided they immediately ceased serving the seven 'super traitors'. It was "absolutely necessary", however, that the seven 'super traitors' be killed even, it appears, if they surrendered. This statement, as announced on the radio, bore KHIEU Samphan's signature.[2587] KHIEU Samphan thereafter publicly advocated the elimination of the seven 'super traitors', guaranteeing that other Khmer Republic

[2584] French Foreign Ministry Telegram, Subject: Ups and Downs of the Cambodian Issue, E3/2680, 23 December 1974, p. 3, ERN (En) 00751828 (NORODOM Sihanouk forged ahead with negotiations, without touching base with the internal resistance, and declared that GRUNK was prepared to grant amnesty to traitors who realised their fatal blunders, by joining forces with FUNK and GRUNK. The Khmer Rouge would probably not appreciate this move).

[2585] Section 3: Historical Background, para. 100; Section 14: Joint Criminal Enterprise, para. 731.

[2586] The Chamber is not satisfied on the evidence before it that this Congress actually took place (Section 8: Roles and Functions – Khieu Samphan, para. 370).

[2587] *KHIEU Samphan Chairs NUFC Congress Session: Communiqué Issued* (in FBIS Collection), E3/117, 26 February 1975, p. 1, ERN (En) 00166772; GRUNK Telegram Addressed to the UN Secretary-General, E3/189, 18 March 1975, p. 2, ERN (En) 00894298 (The seven traitors sentenced by the National Congress on 24 and 25 February 1975 were LON Nol, SIRIK Matak, SON Ngoc Than, CHENG Heng, IN Tam, LONG Boret and SOSTHENE Fernandez); GRUNK Embassy Communiqué, E3/1352, 28 March 1975, p. 1, ERN (En) 00488015; U.S. State Department Telegram, Subject: Khmer Report, E3/3334, 4 March 1975, pp. 6-7, ERN (En) 00413052-3.

officials would be spared if they joined the resistance before it was too late.[2588]

821. Contemporaneous diplomatic reports speculated that this decision was taken to rebut the concerns of the international community about possible massacres in the wake of a Khmer Rouge victory.[2589] Although NORODOM Sihanouk refuted international concerns that a blood bath would follow victory on the basis that only the seven 'super traitors' would be killed,[2590] he is also reported to have predicted that the Cambodian people would eradicate senior officials and cadres of the Khmer Republic and called for at least 16 other 'super traitors' to be held accountable for their "war crimes".[2591]

822. However, unlike NORODOM Sihanouk's December 1974 declaration, later declarations, including that of the FUNK Congress, tendered qualified offers of clemency. Khmer Republic officials would be forgiven only if they ceased their cooperation with the Khmer Rouge immediately, and before it was too late.[2592] Clemency would also be denied if the Khmer Rouge met resistance after taking Phnom Penh.[2593]

823. The Khmer Rouge claimed that they had prior to 17 April 1975 discovered

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[2588] Section 3: Historical Background, paras 120, 127.

[2589] U.S. State Department Telegram, Subject: Khmer Report, E3/3336, 11 March 1975, p. 9, ERN (En) 00413132; U.S. State Department Telegram, Subject: March 11 EA Press Summary, E3/3337, 11 March 1975, p. 3, ERN (En) 00413141; U.S. State Department Telegram, Subject: John Burns Interview with Sihanouk, E3/3339, 15 March 1975, p. 1, ERN (En) 00413177.

[2590] U.S. State Department Telegram, Subject: March 11 EA Press Summary, E3/3337, 11 March 1975, p. 3, ERN (En) 00413141.

[2591] *NORODOM Sihanouk Speech* (Kampuchea News Agency), E3/1287, 2 April 1975, p. 4, ERN (En) S 00771787.

[2592] GRUNK Telegram Addressed to the UN Secretary-General, E3/189, 18 March 1975, p. 3, ERN (En) 00894299 (The National Congress called upon LON Nol officials to abandon the seven traitors "while there is still time"); U.S. State Department Telegram, Subject: Khmer Report, March 1975, E3/3334, 4 March 1975, pp. 6-7, ERN (En) 00413052-3 (Politicians and high personalities, other than the seven traitors, could join FUNK if they stopped cooperating with LON Nol "now"); U.S. State Department Telegram, Subject: Khmer Report, E3/3341, 18 March 1975, p. 4, ERN (En) 00413196; *KHIEU Samphan Chairs NUFC Congress Session: Communiqué Issued* (in SWB Collection), E3/117, 26 February 1975, p. 1, ERN (En) 00166772 (Khmer Republic officials had the full right to join FUNK/GRUNK provided they "immediately cease their service to the seven traitors"); T. 8 May 2013 (Philip SHORT), p. 134 (There were appeals by KHIEU Samphan, HU Nim and HOU Youn to come over the Khmer Rouge immediately, not to wait).

[2593] U.S. State Department Telegram, Subject: March 12 EA Press Summary, E3/3338, 12 March 1975, p. 4, ERN (En) 004131554; U.S. State Department Telegram, Subject: John Burns Interview With Sihanouk, E3/3339, 15 March 1975, p. 2, ERN (En) 00413178; U.S. State Department Telegram, Subject: Khmer Report, E3/3341, 18 March 1975, p. 5, ERN (En) 00413197.

enemy plots to rebel if the Khmer Rouge won the war.[2594] Specifically, IENG Sary claimed that Khmer Republic officials and the Central Intelligence Agency (CIA) had a plan to assassinate Khmer Rouge leaders and carry out a coup d'état.[2595] Thus any cooperation on or after liberation would be too late. Following liberation, Khmer Republic officials, military officers and "secret agents" were targeted and sought for arrest and execution.[2596]

824. The U.S. Department of State reported in May 1975 that, in addition to two of the seven 'super traitors' (SIRIK Matak and LONG Boret), five other high-ranking Khmer Republic officials had been arrested and executed. These included UNG Bun Hor (National Assembly President), THOM Lim Huong (Minister of Information), CHHIM Chhuon (the Phnom Penh Special Military Region Commander), SREY Yar (Paratroop Brigade Commander) and LON Non (resigned brigadier general and LON Nol's younger brother).[2597] None of these former Khmer Republic officials was sentenced by the National Congress as one of the seven 'super traitors'.[2598] In a speech delivered on 2 April 1975, however, NORODOM Sihanouk expanded the list of 'super traitors' naming a further 16 "war criminals", including LON Non, who ought to be brought to account.[2599]

825. GRUNK Prime Minister PENN Nouth also claimed that FUNK/GRUNK appeals to former Khmer Republic officials to leave the country before 17 April 1975

[2594] Section 10: Movement of the Population (Phase One), para. 526.

[2595] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 8, ERN (En) 00417606; French Foreign Ministry Telegram, Subject: The Danish Ambassador's Visit to Kampuchea, E3/480, 26 January 1978, p. 5, ERN (En) 00389178; IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 1, ERN (En) 00087603; *see also*, KHIEU Samphan Interview Record, E3/3196, undated, p. 4, ERN (En) 00815867 (He knew some agents of the Americans would remain after liberation, but they were shattered quickly).

[2596] Section 10: Movement of the Population (Phase One), paras 503-513.

[2597] U.S. State Department Telegram, Subject: American Talks of Phnom Penh After Fall, E3/4148, 4 May 1975, p. 4, ERN (En) 00413478; *see also*, Amnesty International Report: *Democratic Kampuchea* (Cambodia), E3/3865, 1975-1976, p. 1, ERN (En) 00004213 (IENG Sary confirmed in November 1975, during a visit to Thailand, that three leaders of the former regime had been executed: LONG Boret, SIRIK Matak and LON Non); U.S. State Department Telegram, Subject: IENG Sary Visit to Thailand, E3/3360, 20 November 1975, p. 2, ERN (En) 00413889 (IENG Sary stated that LONG Boret and LON Non had been executed); Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, 2007 (Additional Footage: *One day at Po Chrey*), at 22.07 - 22.11 (NUON Chea confirmed that the CPK's "political orders" that the super-traitors "were to be liquidated", were in fact carried out); *see also*, Section 10: Movement of the Population (Phase One), para. 503.

[2598] GRUNK Telegram Addressed to the UN Secretary-General, E3/189, 18 March 1975, p. 2, ERN (En) 00894298.

[2599] *NORODOM Sihanouk Speech* (Kampuchea News Agency), E3/1287, 2 April 1975, p. 4, ERN (En) S 00771787.

indicated that there was no policy to execute them.[2600] However, even once they managed to escape, former Khmer Republic officials were not safe. The Khmer Rouge also actively sought the return of high-ranking "traitors" who had escaped, including SOSTHENE Fernandez, General SEK Sam Siet, Col. KETH Reth, Col. CHOU Deth and former Minister of Justice, BAN Sang.[2601] In 1976, refugees in Thailand who were sent back to the Khmer Rouge, including Khmer Republic officials, were reportedly killed.[2602]

826. The Chamber is therefore satisfied that FUNK/GRUNK declarations that Khmer Republic officials, other than the seven 'super traitors', would be granted amnesty, as well as appeals to Khmer Republic officials to leave the country, did not demonstrate any policy on the part of the Khmer Rouge to spare them. These declarations were merely a façade, an attempt at plausible deniability on the international stage, much like the organisation that issued them.[2603] Indeed, an official in NORODOM Sihanouk's office in Peking intimated to French diplomats on 17 April 1975 that the Khmer Rouge was trying to keep the international community at

[2600] French Foreign Ministry Telegram, Subject: Interview with Mr. PENN Nouth, E3/4132, 19 April 1975, p. 1, ERN (En) 00491365.

[2601] GRUNK Mission in Paris Communiqué, E3/1352, 28 March 1975, p. 1, ERN (En) 00488015 (Reminding the international community that SOSTHENE Fernandez, who had fled to France, remained one of the traitors sentenced by the National Congress and encouraging all people to support the declaration of the National Congress); French Foreign Ministry Memo, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, p. 4, ERN (En) 00525814 (The Cambodian authorities repeatedly requested the Thais to hand over Cambodian refugees particularly close to the LON Nol regime including General SEK Sam Siet, Col. KETH Reth, Col. CHOU Deth and former Minister of Justice, BAN Sang).

[2602] U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 13, ERN (En) 00443170 (350 refugees, including Khmer Republic officials were returned from Thailand and killed); Letter from Amnesty International to KHIEU Samphan, E3/3864, 28 February 1977, pp. 1, ERN (En) 00498337-8 (Bringing to KHIEU Samphan's attention allegations that 26 refugees returned to Cambodia were killed); Amnesty International Memo, Subject: Democratic Kampuchea Information and Recent Action, E3/3307, 3 March 1977, p. 1, ERN (En) 00419505 (A letter was sent to KHIEU Samphan concerning the reported execution of 26 refugees returned from Thailand in November 1976); French Foreign Ministry Telegram, Subject: Cambodian Refugees Sent Back to Their Country of Origin, E3/2742, 29 November 1976, p. 2, ERN (En) 00742298 (26 refugees, including a customs officer, gendarme, District chief and former soldiers, were turned back over to the Khmer Rouge. Refugees were an embarrassment to the Khmer Rouge, especially those who were Khmer Republic officials. After their return, the refugees were paraded publicly and their fate was not in doubt).

[2603] Section 3: Historical Background, para. 100; Section 5: Administrative Structures, para. 230; Section 14: Joint Criminal Enterprise, para. 731.

bay while it settled scores.[2604]

14.3.2.2. *The On-Going War with the Imperialists*

827. In 1976, 1977 and 1978, Amnesty International repeatedly appealed to PENN Nouth, KHIEU Samphan and the DK government to investigate, or permit independent observers to investigate, alleged human rights violations, including the execution of former Khmer Republic officials.[2605] The alleged executions of former Khmer Republic officials had been reported internationally by various states and organisations.[2606] In late 1975, IENG Sary lamented that the international community focused too much on the fate of "traitors" and war criminals.[2607] To further substantiate its claim that the U.S. and Khmer Republic officials (who were perceived to be their agents in Cambodia) continued to interfere in its affairs, the Khmer Rouge

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[2604] French Ministry of Foreign Affairs Telegram, Subject: Your Telex No. 347 Refers., E3/2718, 17 April 1975, p. 2, ERN (En) 00722362.

[2605] *Statement Submitted by Amnesty International* (ECOSOC), E3/4198, August 1978, p. 7, ERN (En) 00271510 (Asking DK to allow independent observers to carry out investigations in-country and set up appropriate mechanisms to protect the fundamental rights of citizens); Letter from Amnesty International to KHIEU Samphan, E3/3864, 28 February 1977, p. 1, ERN (En) 00498337-8 (Bringing to KHIEU Samphan's attention allegations that 26 refugees returned to Cambodia were killed and that people were taken away and executed because of the activities of family members); Amnesty International Report: *Democratic Kampuchea (Cambodia)*, E3/3865, 1975-1976, p. 1, ERN (En) 00004213 (On 18 February 1976, Amnesty International expressed concern to PENN Nouth about reports of human rights violations. Then, following the formation of the new government, they wrote to KHIEU Samphan on 11 May 1976. They received no response); Amnesty International Memorandum: *Democratic Kampuchea Information and Recent Action*, E3/3307, 3 March 1977, p. 1, ERN (En) 00419505 (A letter was sent to KHIEU Samphan concerning the reported execution of 26 refugees returned from Thailand in November 1976. Amnesty International also sent other letters in 1976 and if they received no response, would issue a public statement).

[2606] *See e.g.* U.S. National Security Council Memorandum, Subject: Indochina Assessment, E3/3471, 26 September 1975, p. 2, ERN (En) 00443135 (Policy of widespread arrests and executions of former government officials); U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 13, ERN (En) 00443170 (Members of former government's political elite, bureaucracy and military have no immunity and are prime targets for execution along with their families); *Statement Submitted by Amnesty International* (ECOSOC), E3/4198, August 1978, p. 3, ERN (En) 00271506 (There were reports of summary executions and disappearances on a large-scale, in particular in 1975 and 1976, of former Khmer Republic officials and their families); *Submission of the Government of the United States of America under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1802, 6 July 1978, p. 7, ERN (En) 00087616 (All former soldiers, students and government officials were being eliminated); *Submission from the Government of the United Kingdom of Great Britain and Northern Ireland under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/3400, 18 July 1978, pp. 3-4, ERN (En) 00075969-70 (Over the same period they were expelling urban populations, the Khmer Rouge were investigating backgrounds, separating out former officials who were then taken away on pretexts and executed).

[2607] U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 4, ERN (En) 00413793 (Regardless of whether LONG Boret was dead, he was a traitor, judged by the people and Congress); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 2, ERN (En) 00087604.

publicly announced alleged attacks on the territorial integrity of Cambodia following 17 April 1975. In particular, the Khmer Rouge highlighted the *Mayaguez* affair, which resulted in the American bombing of Sihanoukville, in May 1975[2608] and the alleged American bombing of Siem Reap in February 1976.[2609]

828. Regardless of the truth of these allegations, these public announcements of attacks on Cambodian territorial integrity were intended to demonstrate that the war against the U.S. imperialists and their "lackeys" was far from over.[2610] On 27 February 1976, Office 870 issued information and instructions concerning the Siem Reap bombing. The Standing Committee had concluded that the Americans were responsible, explaining that, after the urban evacuations "broke[] up and scattered" the imperialist attack plan, they continuously attempted to attack Cambodia. The Standing Committee instructed that the Siem Reap bombing be used to re-educate the

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[2608] In May 1975, the Khmer Rouge seized the *Mayaguez* and her crew, claiming that it had trespassed into Cambodian waters and had spy equipment on board. After American rescue attempts, including the bombing of Sihanoukville, the Khmer Rouge claimed that these measures were premature and that it had already decided, but not yet announced, that the crew would be released (*Ship Seizure Order Denied by Cambodia* (The Washington Post), E3/646, 8 September 1975, p. 1, ERN S 00003637 (IENG Sary explained that President Ford was notified of the *Mayaguez* situation on 12 May. There were diplomatic efforts between 12-14 May and then on 14 May, the U.S. began its assault. That same day HU Nim announced over the radio that the *Mayaguez* and crew would be released); *A Closer Look at the 'Mayaguez'* (Far Eastern Economic Review), E3/647, 3 October 1975, p. 1, ERN (En) S 00003654 (IENG Sary stated that an American ship was seized in the Gulf of Thailand by a local commander. As the Cambodians were preparing to release the ship, the U.S. started bombing and attacking Tang Island where it was being held, as well as the ports of Sihanoukville and Ream); IENG Sary Interview by Newsweek, E3/550, 8 September 1975, p. 2, ERN (En) 00087604 (Cambodia made the correct decision when seizing the *Mayaguez* because it was in Cambodian territorial waters and was a spy ship); U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, pp. 3-4, ERN (En) 00413792-3).

[2609] In February 1976, the Khmer Rouge publicly announced that American planes had bombed Siem Reap. The U.S. Department of State declared the allegations to be ridiculous and false. Foreign diplomats who visited the site of the bombing, at the invitation of the Khmer Rouge, were not convinced that the bombing was done by aerial attack or in February 1976 (French Foreign Ministry Memorandum, Subject: Cambodian Review (February 1976), E3/490, 11 May 1976, pp. 7-8, ERN (En) 00610824-5 (The U.S. State Department described the accusation as "totally ridiculous and false"); French Embassy Telegram, Subject: Information and Personal Accounts on Cambodia, E3/485, 24 January 1977, p. 3, ERN (En) 00519827 (After his visit to Cambodia, a Guinean ambassador did not believe the Cambodian version of events that American planes bombed Siem Reap on 25 February 1976, considering that whatever happened at the site may have been done long before. According to him, it was done by Khmer rebel units); French Foreign Ministry Memorandum, Subject: Cambodia (in Advance of Franco-Soviet Consultations), E3/2668, 3 March 1976, p. 3, ERN (En) 00503983 (The bombing of Siem Reap and astounding explanation offered for it may suggest divisions within Cambodian leadership)).

[2610] Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 62-63, ERN (En) 00103754 (There were indications that the Khmer Rouge did not see the fall of LON Nol as the end of the war against the imperialists. They, in particular POL Pot, were convinced that the U.S., "obliged to accept its defeat, intended to strike back").

Party internally, stirring up hatred, vigilance and commitment to achieve three tonnes per hectare.[2611] Thereafter, referring to the *Mayaguez* incident and the Siem Reap bombing, KHIEU Samphan repeatedly appealed to the people and the army to search for and eliminate enemies he claimed would never give up.[2612] The timing of the alleged attacks and accompanying public announcements corresponded with continued targeting of the former Khmer Republic officials in the latter half of 1975 and 1976.[2613]

14.3.2.3. *Khmer Republic Officials were Working in the Countryside*

829. IENG Sary and POL Pot claimed that former Khmer Republic officials and soldiers were not killed, but rather that, in plain clothes, they went to the country-side to work after 17 April 1975.[2614] Refugee and victim accounts confirm that some were taken for hard labour,[2615] while those who hid their identity were moved just as other

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[2611] Committee 870 Instructions, E3/1173, 27 February 1976, pp. 1-2, ERN (En) 00525781-2.

[2612] KHIEU Samphan Speech at 5th Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, pp. 16-17, ERN (En) 00644939 (Revolutionary vigilance had to continue constantly as the enemies would never give up their dark schemes, as demonstrated by the bombing of Siem Reap and the *Mayaguez* affair); *KHIEU Samphan's Speech at Anniversary Meeting* (in SWB Collection), E3/201, 15 April 1977, p. 2, ERN (En) 00419513 (Must preserve the fruits of the Cambodian revolution by resolutely suppressing all categories of the enemies, preventing them from committing aggression, interference or subversion. Enemies must be wiped out); *Phnom Penh Rally Marks 17th April Anniversary* (in SWB Collection), E3/562, 16 April 1978, p. 6, ERN (En) S 00010563 (All units had to continuously raise high the sense of revolutionary vigilance and defend against internal and external enemies); *see also*, French Embassy Telegram, Subject: Celebration of the 2nd Anniversary of the Founding of DK, E3/487, 20 April 1977, pp. 2-3, ERN (En) 00654869-70 (At celebrations of the second anniversary of the founding of DK, the Chargé d'Affaires at the DK embassy in Laos declared that the DK was foiling, one attempt after another, the schemes and subversive acts of the American imperialists and reactionaries); *see also*, DK Foreign Ministry Notebook, E3/925, 1976-1979, p. 17, ERN (En) 00003253 (The imperialists continued to attempt to destroy the revolution, for example the *Mayaguez* incident and the Siem Reap bombing).

[2613] Section 11: Movement of the Population (Phase Two); Section 14: Joint Criminal Enterprise.

[2614] U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, p. 4, ERN (En) 00413793 (Officers of the LON Nol regime were participating in agricultural production. Those of the previous regime who were sincere were being used); *What We Are Doing Has Never Been Done Before* (Der Spiegel), E3/1589, 1977, p. 2, ERN (En) 00185419 (When Phnom Penh was liberated, the former soldiers threw away their uniforms, changed into plain clothes and joined the crowd and now do their work just as anyone else); POL Pot Interview with Belgian-Kampuchea Association Delegation, E3/5712, 5 August 1978, p. 8, ERN (En) 00829767 (Former officials of LON Nol regime were living and working in cooperatives).

[2615] *See e.g.* Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 3, ERN (En) 00087305 (Soldiers were taken towards Pailin for hard labour in a special camp); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 6, ERN (En) 00517768 (The general saw non-commissioned officers in a camp close to Siem Reap hitched to carts under Khmer Rouge guard).

'New People'.[2616] In late 1975, having already taken care of many high-ranking officials, refugees reported that the Khmer Rouge continued targeting low-ranking officials, their families and those who had been disguised.[2617] One refugee explained that the Khmer Rouge had learned that not only Khmer Republic officials, but also their families had to be killed, otherwise there would always be a threat of rebellion.[2618] The Chamber is therefore satisfied that, although some Khmer Republic officials were not immediately singled out from other 'New People' for mistreatment and were sent to the countryside to work, the Khmer Rouge was committed to a policy to target for arrest, execution and/or disappearance all elements of the former Khmer Republic regime.

14.3.3. ***Pattern***

830. According to an account provided by a refugee who was a former LON Nol soldier, in 1972, 500 captured Khmer Republic soldiers were executed by the Khmer Rouge at the village of Phloeng Chhes.[2619] In September 1973, Khmer Rouge soldiers

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[2616] *See e.g.* T. 24 October 2012 (LAY Bony), p. 15 (Her husband was a LON Nol soldier who hid his profession); Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 18, ERN (En) 00087320 (In Phnom Srok, PHON V managed to hide that he was a LON Nol soldier before 1975); CHEN François Supplementary Information, E3/5107, 5 May 2007, p. 1, ERN (En) 00847843 (In charge of security at the Khmer Republic military tribunal before 17 April 1975, he dressed as a butcher and was evacuated with everyone else).

[2617] U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 24, ERN (En) 00443086 (The focus was on the lower ranking soldiers and their families because other military and civil servants had already been executed. The Khmer Rouge continued to be on the lookout for undiscovered civil servants); SAN Chea Interview Record (DC-Cam), E3/5368, 22 August 2008, p. 6, ERN (En) 00824836 (He and his wife were forced to make biographies in 1976 in Takeo since his uncle had been a LON Nol soldier); *Submission from the Government of Norway under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1805, 18 August 1978, ERN (En) 00087557-560 (Refugee account from a former lieutenant who survived the killings of Lon LON Nol Soldiers and of their families. Former soldiers were invited to reveal their identity under the guise that Khmer Rouge were only looking for the seven traitors); *Further Submission from the Government of Canada under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/1806, 8 September 1978, pp. 8, 15, ERN (En) 00087579, 00087586 (In 1977 and 1978, families of soldiers, as well as former officials who had been disguised disappeared. The Khmer Rouge had no choice but to kill all former officials and their families or they might form a resistance); *see also*, Section 10: Movement of the Population (Phase One), paras 567-568; Section 14: Joint Criminal Enterprise, para. 833.

[2618] *Further Submission from the International Commission of Jurists under Commission on Human Rights decision 9 (XXXIV)* (ECOSOC), E3/3327, 20 December 1978, p. 2, ERN (En) 00075939 (In the past, NORODOM Sihanouk killed revolutionaries, but their wives, children and relatives united against him. That could not then be repeated against CPK).

[2619] Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 67, ERN (En) 00170758; T. 11 July 2013 (Stephen HEDER), pp. 31-32.

targeted Khmer Republic officials during the evacuation of Kampong Cham.[2620] In March 1974, government soldiers and officials were executed en masse after the Khmer Rouge took control of Oudong.[2621] In July 1974, surrendered soldiers and their families were executed in Battambang.[2622] In March 1975, there were refugee reports that enemies, including Khmer Republic officials, their agents and those who opposed the political line of the party were being executed in Khmer Rouge territory.[2623]

831. On 17 April 1975, the Khmer Rouge liberated Phnom Penh.[2624] IENG Sary later claimed that searches uncovered weapons which would support the alleged coup plan.[2625] Therefore, before they had a chance to carry out this secret 'plan', Khmer Republic officials and soldiers were identified, including at checkpoints, arrested, some led away and others killed on the spot.[2626] Khmer Republic officials were also convened by radio broadcast. Several generals and ministers, including LONG Boret, surrendered.[2627] On 17 April 1975, a Khmer Rouge military leader at the Ministry of Information stated that the fate of the gathered officials depended on the government, adding that some of the top political and governmental leaders were not far from the city.[2628] Meanwhile, SIRIK Matak and other Khmer Republic officials took refuge at the French Embassy.[2629] GRUNK condemned the French Embassy for giving refuge to hundreds of war criminals.[2630] On 20 April 1975, SIRIK Matak and other Khmer Republic officials were collected from the embassy.[2631] Khmer Rouge soldiers also expressed concern about the presence of Khmer Republic soldiers at Calmette Hospital and after applying pressure were provided a list of patients by the French

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[2620] T. 10 July 2013 (Stephen HEDER), pp. 95-99.
[2621] Section 3: Historical Background, paras 120-122.
[2622] U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 15, ERN (En) 00443172 (On 1 July 1974, about five minutes after soldiers surrendered in Battambang, the Khmer Rouge began firing indiscriminately into the group killing 200 and then proceeded to systematically execute all the men); U.S. National Security Council Memorandum, Subject: Cambodia Fact Sheets, E3/4197, 17 March 1975, p. 26, ERN (En) 00443228 (700 civilians and surrendered soldiers were massacred on 1 July 1974).
[2623] U.S. National Security Council Memorandum, Subject: Cambodia Fact Sheets, E3/4197, 17 March 1975, pp. 24-25, ERN (En) 00443226-7.
[2624] Section 10: Movement of the Population (Phase One), para. 460.
[2625] IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 8, ERN (En) 00417606.
[2626] Section 10: Movement of the Population (Phase One), paras 505, 507-509, 511, 513-515.
[2627] Section 10: Movement of the Population (Phase One), para. 503.
[2628] T. 5 June 2013 (Sydney SCHANBERG), p. 47.
[2629] Section 10: Movement of the Population (Phase One), para. 503.
[2630] GRUNK Special Envoy CHAU Seng Statement, E3/1340, 30 April 1975, p. 1, ERN (En) 00797530.
[2631] Section 10: Movement of the Population (Phase One), para. 503.

Embassy.[2632] Many Khmer Republic officials who surrendered in Phnom Penh were killed, regardless of whether they were among the seven 'super traitors'.[2633]

832. On 21 April 1975, KHIEU Samphan declared that the army had succeeded in "relentlessly attacking and draining the enemy" who had died in agony.[2634] But not all enemies were dead yet. Targeting of former Khmer Republic officials through arrests, killings and disappearances continued in late April and May 1975, before, during or after evacuations, including in Battambang,[2635] Kampong Thom,[2636] Pursat,[2637] Kampong Chhnang,[2638] Kandal,[2639] Takeo[2640] and Siem Reap.[2641] On or around 25 or

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[2632] French Ministry of Foreign Affairs Telegram, Subject: Situation in Phnom Penh - 14h, E3/2693, 18 April 1975, p. 2, ERN (En) 00486888.

[2633] Section 10: Movement of the Population (Phase One), paras 503, 514-515; Section 14: Joint Criminal Enterprise, paras 823, 827-829.

[2634] *KHIEU Samphan 21 April Victory Message on Phnom Penh Radio* (in SWB Collection), E3/118, 21 April 1975, p. 107, ERN (En) 00166994.

[2635] PRUM Sarun Interview Record, E3/5187, 18 June 2008, p. 4, ERN (En) 00274179 (After the Khmer Rouge took power, the officers were killed, and some soldiers were taken to a base. He also personally saw the Khmer Rouge kill a soldier and his wife near Phnom Krapeu); CHUCH Punlork Interview Record, E3/5211, 26 August 2008, p. 3, ERN (En) 00275399 (LON Nol soldiers were assembled by loudspeaker announcement, were taken away by truck and killed in Phnom Sampeou District following liberation); Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 2, ERN (En) 00087304 (Between 20 and 22 April in Battambang Town, the Khmer Rouge declared that those who worked in positions of responsibility in the old government needed to go and welcome NORODOM Sihanouk in Phnom Penh. They were required to wear all their insignia. About 1,000 showed up. Top military officers were offered a banquet and once drunk, shot), p. 3, ERN (En) 00087305 (Lower level officers down to third grade and captains were massacred and ordinary soldiers were taken towards Pailin for hard labour in a special camp), p. 14, ERN (En) 00087316 (Travelers were interrupted on their journey following their evacuation from Battambang by the execution of 500-1,000 LON Nol soldiers and petty officers. Soldiers were required to assemble at a high school in Battambang to go and welcome NORODOM Sihanouk); *See also*, T. 6 December 2012 (HUN Chhunly), pp. 38-40; THACH Saly Victim Complaint, E3/4966, 15 October 2007, pp. 1-3, ERN (En) 00891027-9 (600 LON Nol soldiers were sent to be shot on 19 April 1975 in Moung Russei District. They were ordered to go receive NORODOM Sihanouk. Between 20 and 22 April, many more thousands former LON Nol soldiers were executed); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 5, ERN (En) 00443067 (The Khmer Rouge killed all military officers, civil servants, village chief, businessmen and local militia, as well as their families, of Phnom Srok on 20 April).

[2636] French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 5, ERN (En) 00517767 (All soldiers who were not shot were gathered into camps. He learned of the existence of a camp in Kampong Thom where executions occurred almost every day).

[2637] POV Sinuon Interview Record, E3/5545, 29 September 2009, p. 3, ERN (En) 00387500 (On 17 April 1975, her father, a LON Nol soldier, was shot by the Khmer Rouge); *see also*, Section 12: Tuol Po Chrey, paras 678-681.

[2638] KUNG Samat Interview Record, E3/5232, 22 December 2008, p. 3, ERN (En) 00279257 (Soldiers were separated from the people being evacuated to Kampong Chhnang by loudspeaker and were gathered at one place); YUOS Phal Interview Record, E3/4611, 12 December 2009, pp. 3-4, ERN (En) 00455376-7 (The Khmer Rouge was screening former LON Nol officials, telling them they would be sent for re-education).

[2639] T. 10 April 2013 (François PONCHAUD), p. 14 (In Kien Svay, the Khmer Rouge instructed the Khmer Republic officials to write their names on a board, they were gathered and then taken to be

26 April 1975, a minimum of 250 former Khmer Republic officials were executed at Tuol Po Chrey.[2642]

833. In late 1975, 1976 and thereafter, the Khmer Rouge, through arrest, execution and/or disappearance, continued targeting former Khmer Republic officials and their families[2643] including in Battambang,[2644] Kandal,[2645] Takeo,[2646] Siem Reap/Oddar

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killed); CHHEA Leanghorn Complaint, E3/5329, p. 7, ERN (En) 00883921 (His younger brother had joined the LON Nol side and was therefore killed).

[2640] T. 4 December 2012 (TOENG Sokha), p. 78 (After evacuees from Phnom Penh arrived in Bati District, the Khmer Republic soldiers disappeared); UK Government Report: *Human Rights Violations in Democratic Kampuchea*, E3/3319, 14 July 1978, ERN (En) 00420622 (In May 1975, after working on a dam, a police lieutenant was taken to Thmar Trap Temple where he recognised other police and military who were taken away to be executed, while he was able to run away).

[2641] T. 24 October 2012 (LAY Bony), pp. 27-28 (The Khmer Rouge would arrest men whose ankles had the marks of wearing boots. In Preaek Ang, Siem Reap Province, there an announcement by speaker that all military officers should return to Phnom Penh to resume their work. Her in-law who was a Khmer Republic colonel went and disappeared); T. 12 November 2012 (PECHUY Chipse), pp. 69 (When Siem Reap was evacuated, Khmer Rouge soldiers were on guard and carried out interrogations. There were trucks of former officials to be executed), 72-73 (Khmer Republic officials who had been evacuated to Kampong Kdei were not detained. They were just questioned, interrogated, and executed), 90-91 (Khmer Republic soldiers who were evacuated in 1975 were not captured. They were all executed instantly upon capture); CHEK Vannthang Interview Record, E3/5188, 18 June 2008, p. 1, ERN (En) 00274199 (After 17 April 1975, her husband, a former LON Nol soldier, was rounded up by the Khmer Rouge and killed).

[2642] Section 12: Tuol Po Chrey, para. 681.

[2643] U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 24, ERN (En) 00443170 (Reports say that, since 1 January 1976, the Khmer Rouge executed former teachers, students and low-ranking enlisted men of the Khmer Republic army); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 1, 3, 23-24, ERN (En) 00443063, 00443065, 00443085-6 (Refugees from Cambodian provinces close to the Thai border reported executions of teachers, students and low-ranking LON Nol soldiers since 1 January 1976, in particular those previously under cover); IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, p. 5, ERN (En) 00342504 (In 1976, those who supported LON Nol were separated out); T. 20 March 2012 (KAING Guek Eav), p. 66 (During or after 1975, LON Nol soldiers and military officials were collected and smashed); T. 27 March 2012 (KAING Guek Eav), p. 15 (Identifying lists of prisoners smashed at S-21 which included former LON Nol soldiers); T. 10 April 2013 (François PONCHAUD), p. 30 (In 1975, it was the national revolution. The Khmer Rouge aimed to destroy all the people who worked for the Americans or the LON Nol regime, who were regarded as traitors); *Submission from Amnesty International under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/4521, 14 July 1978, ERN (En) 00076003 (There were reports of summary executions of many people because of their position under the former administration and in some cases, relatives of those regarded as traitors or enemies were also executed. Many refugees alleged that large-scale summary executions of officers of the former Republican army occurred in 1975 and early 1976, sometimes involving their family dependents. They were either executed or taken away and never heard of again).

[2644] Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 4, ERN (En) 00087306 (In November 1975, soldiers and intellectuals were selected to be killed in Ta Kriem, while others were massacred near Phnom Sampeou), p. 15, ERN (En) 00087317 (Following a local rebellion in Samraong in February 1976, former LON Nol pilots and their families were executed at Chamcar Khnor), p. 17, ERN (En) 00087319 (In January 1976, more than 500 former civil servants were executed at the foot of Phnom Trayung in Phnom Srok District. The former president of the National Insurance Company and the former governor of Kampong Speu were taken to a prison); U.S. National Security Council Memorandum, Subject: Assessment of Developments in

Meanchey,[2647] Kampong Thom,[2648] Kampong Cham,[2649] Pursat,[2650] Svay Rieng[2651] and Prey Veng.[2652]

834. There was a clear pattern in the way Khmer Republic officials were identified by the Khmer Rouge after the cessation of the armed conflict and throughout the DK era. Witness François PONCHAUD and Expert Philip SHORT testified that lies used

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Indochina Since the End of the War, E3/3472, 15 July 1976, p. 25, ERN (En) 00443171 (One account describes the execution of ten former senior civil servants and their families (about 60 people total) in Mongkol Borei); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 23, ERN (En) 0044308.

[2645] Notes by H. LOCARD: *Research Notes on Democratic Kampuchea Prison Network*, E3/2071, May 2007, p. 23, ERN (En) 00087325 (In late 1975, in Koh Thom, Kandal Province, the Khmer Rouge called for bankers, students and civil servants to go and welcome NORODOM Sihanouk. 400 went and only 25 were ever seen again); UK Government Report: *Human Rights Violations in Democratic Kampuchea*, E3/3319, 14 July 1978, ERN (En) 00420628; CHAK Thoeurng Interview Record, E3/5541, 31 August 2009, p. 3, ERN (En) 00374818 (In 1978, alleged LON Nol soldiers and CIA agents were arrested and interrogated in Kandal Province).

[2646] Refugee Accounts Conducted in Paris and Thailand and collected by François PONCHAUD, E3/5776, pp. 226-227, ERN (En) 00875259-60 (In 1976 and 1978, former civilian and government officials were arrested and killed in Bos Chas, following increasing and unceasing inquiries into their backgrounds by the Khmer Rouge); Refugee Accounts collected by François PONCHAUD, E3/4590, p. 217, ERN (En) 00820535 (In January 1976, officers were brutally killed and disappeared, after being deceived into believing that they would be sent elsewhere to work).

[2647] U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 3, ERN (En) 00443065 (A refugee, a former corporal, reported that the Khmer Rouge were trying to discover previous soldiers and then executed them in Siem Reap), p. 23, ERN (En) 00443085; HENG Chuy Interview Record, E3/5215, 9 September 2008, p. 3, ERN (En) 00275443 (In 1978, former soldiers, police and government officials were detained in Siem Reap, later transporting them away by truck).

[2648] U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 23, ERN (En) 00443085; SIM Hip Complaint, E3/5355, 19 June 2008, pp. 6-7, ERN (En) 00869873-74 (Former LON Nol soldiers were taken away to be killed, including in 1977).

[2649] SOENG Leum Interview Record (OCP), E3/4649, 17 November 2006, p. 2, ERN (En) 00222963 (All those who were connected with the old regime or held power in the old society were taken away by truck and killed in 1977 and 1978 in Kampong Cham); SENG Srun Interview Record, E3/1692, 11 August 2008, pp. 2-3, ERN (En) 00242084 (In early 1976, soldiers were arrested and detained); Refugee Accounts collected by François PONCHAUD, E3/4590, pp. 169-170, ERN (En) 008204887-00820488 (Former officers were convened by radio broadcast and they were then taken to O Rieng Or and then transported by truck to other locations where they worked with other soldiers and their families. They were later taken to security centres, some killed).

[2650] T. 24 October 2012 (LAY Bony), pp. 15-18 (Upon arrival in Pursat Province, the Khmer Rouge learned that her husband was as LON Nol soldier. She and her husband were arrested and her husband executed); *see also*, Section 11: Movement of the Population (Phase Two), para. 618.

[2651] CHAN Sokeat Interview Record, E3/5169, 21 April 2008, pp. 5-6, ERN (En) 00250081-2 (In 1976, 1977 and 1978, LON Nol soldiers were targeted for arrest and detention in Svay Rieng Province).

[2652] SAING Ry Civil Party Application, E3/4919, 24 October 2009, p. 1, ERN (En) 00890972 (On 17 April 1976, her father, a former LON Nol soldier, was shot dead by the Khmer Rouge in Kampong Leav District, Prey Veng Province); UN Roeun Complaint, E3/5395, 13 June 2008, p. 6, ERN (En) 00870341 (Former LON Nol soldiers were killed after working at Pouthi Borei for a while).

to control the situation and people, were the "very fabric" of the regime.[2653] In turn, the Khmer Rouge used deception to lure former Khmer Republic officials and soldiers into revealing their identities by telling them they would be taken to meet NORODOM Sihanouk, educated or re-integrated into the new armed forces.[2654] Khmer Republic officials and soldiers were then arrested, executed or disappeared.[2655] This same method was used throughout the country.[2656] François PONCHAUD,[2657] Philip SHORT[2658] and Expert David CHANDLER[2659] confirmed that the policy to execute former Khmer Republic officials was implemented nationwide.

14.3.4. *Legal Findings*

835. The Trial Chamber is satisfied, based on the evidence put before it in Case 002/01, that the existence of a joint criminal enterprise has been established. First, the evidence establishes that a plurality of persons, including the leaders of the CPK, agreed to a common purpose involving the implementation of a socialist revolution in Cambodia.[2660] Second, it has also been established that while this common purpose was not criminal in nature, the policies formulated by the Khmer Rouge involved the commission of a crime as a means of bringing the common plan to fruition. In this

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[2653] T. 10 April 2013 (François PONCHAUD), pp. 24 (The Khmer Rouge lied, it was normal for them. The real reasons were ideological), 5 (Angkar used lies to lure people to follow them and control the situation, especially when they executed innocent people); T. 7 May 2013 (Philip SHORT), pp. 92-93 (Lies were the very fabric of everything the regime did).

[2654] T. 8 May 2013 (Philip SHORT), p. 136; UK Government Report: *Human Rights Violations in Democratic Kampuchea*, E3/3319, 14 July 1978, para. 8, ERN (En) 00420601; Report by S. HEDER and M. MATSUSHITA: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, p. 46, ERN (En) 00170737; T. 11 July 2013 (Stephen HEDER), pp. 32-33; T. 10 April 2013 (François PONCHAUD), pp. 29, 35-36, 56.

[2655] Refugee Accounts, E3/4590, p. 13, ERN (En) 00820331 (All the refugees gave the same answer, that people disappeared or were executed); T. 22 October 2012 (CHUM Sokha), p. 70 (Those people who had a connection with the previous LON Nol regime, including military officers, agents, or intelligence officers, or high-ranking officers, were detained).

[2656] *See* footnotes in Section 14: Joint Criminal Enterprise, para. 833.

[2657] François PONCHAUD Interview Record, E3/370, p. 7, ERN (En) 00333955 (Based on credible refugee accounts, PONCHAUD concluded that executions of former Khmer Republic officials occurred nation-wide).

[2658] T. 8 May 2013 (Philip SHORT), pp. 130-131 (The targeting across the country was pretty uniform with slight variations in certain places); T. 7 May 2013 (Philip SHORT), pp. 87-88 (There was a pattern across the country of killing former LON Nol officials).

[2659] T. 18 July 2012 (David CHANDLER), p. 22 (In the early stages of the DK regime, the primary enemies were those who had anything to do with the former Khmer Republic regime or army);T. 20 July 2012 (David CHANDLER), pp. 8-9 (The executions of those in the former regime were widely accepted as the first phase by various writers. This policy continued and was fully documented in refugee accounts and DK documents).

[2660] Section 14: Joint Criminal Enterprise, paras 777-778.

case, there was a policy to target former Khmer Republic officials which involved the murder and extermination of former Khmer Republic officials at Tuol Po Chrey. This policy was also demonstrated by a consistent pattern of conduct, of which the murders and extermination at Tuol Po Chrey formed part.

836. The Chamber is also satisfied that the murders and extermination at Tuol Po Chrey can be imputed to participants in the JCE who, when using a direct perpetrator, acted to further the common purpose.[2661] The Northwest Zone Committee ordered the assembly and execution of former Khmer Republic officials. ROS Nhim, Secretary of the Northwest Zone, presided over the meeting at which this directive was issued. Ta Sot, Secretary of Sector 7 (which included Tuol Po Chrey), was also present. Thereafter, Ta Sot, as well as representatives from the Zone and Sector Committees, attended meetings at which Khmer Republic officials were assembled and from which they were taken to be executed at Tuol Po Chrey. They were driven by Zone drivers and a Zone commander chose Tuol Po Chrey as the location for the executions. The Chamber is therefore satisfied that the murders and extermination at Tuol Po Chrey can be imputed, at least to ROS Nhim, a participant in the JCE.

837. The Chamber addresses below, under the sections concerning the individual criminal responsibility of the Accused, the participation of NUON Chea and KHIEU Samphan in the JCE and their resulting responsibility, if any, for these crimes (Sections 15 and 16).

[2661] Section 13: Applicable Law: Individual Criminal Responsibility, para. 693; *see also, Krajišnik* Appeal Judgement, para. 226 (A sufficient link exists when a JCE member explicitly or implicitly requested a non-JCE member to commit a crime, or instigated, ordered, encouraged or otherwise availed himself of the non-JCE member to commit the crime forming part of the common purpose).

15. THE CRIMINAL RESPONSIBILITY OF NUON CHEA

838. According to the Closing Order, as limited in Case 002/01, NUON Chea, through a JCE, committed the following crimes against humanity:

> Movement of population (phase one): murder, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity);
>
> Movement of population (phase two): political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity); and
>
> Tuol Po Chrey: murder and extermination through executions of Khmer Republic officials.[2662]

The Closing Order alleges that NUON Chea intentionally participated in, or contributed to, the design and implementation of the common purpose which resulted in and/or involved the commission of crimes both before and during the DK era.[2663] In his capacities as Deputy Secretary of the CPK, member of the Military Committee and full-rights member of the Central and Standing Committees, the Closing Order alleges that NUON Chea attended high-level meetings where policy was developed, participated in elaborating the CPK's official policy documents and publically explaining, endorsing and encouraging CPK policies through speeches, propaganda and political training.[2664] On this basis, the Closing Order further alleges that NUON Chea planned, ordered, instigated, aided, abetted or, alternatively, is responsible as a superior for all crimes against humanity falling within the scope of Case 002/01.[2665]

15.1. Knowledge Relevant to the Modes of Liability

839. NUON Chea's knowledge of the policies, patterns of conduct and specific crimes falling within the scope of Case 002/01 is relevant to the Chamber's assessment of the chapeau requirements for crimes against humanity and all forms of responsibility,[2666] and will therefore be addressed first. The requisite level of

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[2662] Closing Order, paras 1525, 1540; *see also* Section 14: Joint Criminal Enterprise, paras 779-781, 811-813.
[2663] Closing Order, para. 1533.
[2664] Closing Order, para. 1532.
[2665] Closing Order, paras 1542, 1545, 1548, 1551, 1554, 1559-1560.
[2666] For the applicable law on each mode of liability, see Section 13: Applicable Law: Individual Criminal Responsibility.

knowledge varies depending on whether the criminal liability of the Accused materialises before, concurrent with or after the commission of the crimes.[2667] Therefore, in this section, the Chamber will examine whether, prior to the commission of the crimes falling within the scope of Case 002/01, the Accused was aware of the substantial likelihood of their later occurrence (Section 15.1.1), and whether the Accused had knowledge of the crimes concurrent with (Section 15.1.2) or after their commission (Section 15.1.3).

840. NUON Chea was a strong proponent of waging 'class struggle'[2668] and had primary responsibility for propaganda-related matters.[2669] He appeared as the chairman, trainer or speaker at a range of meetings, trainings or study sessions where he promoted the Party line of vigilance against internal and external enemies to lower-level followers.[2670] NUON Chea knew that such indoctrination to hate would inevitably lead to violence and admitted that over time, due to suffering and hardship, the party line concerning class struggle and hatred was engrained in the people in the liberated zones.[2671] NUON Chea supported the view that the revolution should rely on the peasants of the lowest classes in order to impose on Cambodia the dictatorship of the proletariat. The majority of those belonging to this new ruling class had very little formal education. All were strictly disciplined, indoctrinated, and taught to deceive people and behave in accordance with the principle of secrecy. NUON Chea could not ignore that giving extensive power to these people would lead to unquestioning implementation of the party line without the exercise of proper judgement. For this reason, the only reasonable expectation was that vast numbers of people would die during forced population movements because of the conditions of the evacuations, and that such movements would involve commission of large numbers of crimes against humanity. Nevertheless, in engaging in propaganda activities and training cadre on vigilance against enemies, the strict indoctrination of peasants on class struggle, including the identification of all 'New People' and former Khmer Republic officials as enemies, NUON Chea knew that there was a substantial likelihood that

[2667] *See* Section 13: Applicable Law: Individual Criminal Responsibility, paras 694, 698, 700, 702, 704, 715.
[2668] *See* Section 7: Roles and Functions – Nuon Chea, paras 305-312.
[2669] *See* Section 7: Roles and Functions – Nuon Chea, para. 324.
[2670] *See* Section 7: Roles and Functions – Nuon Chea, paras 325, 347.
[2671] *See* Section 14: Joint Criminal Enterprise, para. 734.

crimes would be committed.

841. NUON Chea made various admissions, outlined below, concerning his general knowledge of the policies and of the crimes being committed by the Khmer Rouge. Further, throughout the time period relevant to Case 002/01, NUON Chea had access to wide-ranging information concerning the crimes.

15.1.1. *Awareness of the Substantial Likelihood of the Commission of the Crimes*

842. In a process initiated in May 1972 and officially confirmed one year later, the Central Committee decided to close markets in the liberated zones and to establish cooperatives, pooling labour resources for rice production and "[attacking] the power of the classes of feudalists, land owners, and capitalists."[2672] In January 1972, IENG Sary gave a public interview concerning collectivisation in the liberated zones.[2673] CPK circulars assigned people to collective agricultural production.[2674] Further, conditions of transport, the health or the well-being of the people were of no concern. In the July 1973 issue of *Revolutionary Flag*, the Party leadership, noting shortages in the liberated zones, was committed to continue forced evacuations leaving it to the people to resolve their own problems.[2675] Pursuant to this policy, consistent patterns of forced urban evacuations and movements between rural areas emerged in the liberated zones, accompanied by ill-treatment, discrimination against people taken from enemy territory and against Khmer Republic officials, and deaths resulting from acts of terror, the conditions of transfer and the use of force.[2676]

843. Drawing on this prior experience, NUON Chea participated in the Party leadership's formulation of the policy of forced movements of the population and decision-making processes which resulted in or involved the crimes in Case 002/01.[2677] In June 1974 and again in April 1975, the Party leadership, including

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[2672] Section 3: Historical Background, paras 113, 115.
[2673] Section 14: Joint Criminal Enterprise, para. 734.
[2674] Section 3: Historical Background, para. 113.
[2675] Section 3: Historical Background, para. 104.
[2676] Section 14: Joint Criminal Enterprise, paras 791-794, 800-803.
[2677] Section 3: Historical Background, paras 133-147; Section 7: Roles and Functions – Nuon Chea, paras 315-316, 325, 334-335; Section 15: The Criminal Responsibility of Nuon Chea, paras 878-882.

NUON Chea, collectively planned to evacuate urban areas forcibly.[2678] This plan contemplated and/or involved the crimes against humanity of murder, extermination, political persecution, and other inhumane acts (comprising forced transfers and attacks against human dignity).[2679] Further, based on prior experience, in particular at Oudong, the June 1974 plan to evacuate all the cities after the liberation of the country necessarily also contemplated and/or involved the targeting of Khmer Republic officials for execution, arrest or disappearance following the liberation of an area.[2680] Following June 1974, the pattern of urban evacuations and targeting Khmer Republic officials intensified, in particular during the final offensive to liberate the country.[2681]

844. The Chamber has found that the Party leadership formulated and implemented a policy of targeting Khmer Republic officials which continued during the DK era.[2682] NUON Chea admitted that there was a policy and an intention to eliminate bad elements which justified 'smashing' or eliminating people if they could not be re-educated.[2683] In relation to Khmer Republic officials specifically, the Chamber has found evidence of the Party leadership's policy to target former Khmer Republic officials as bad elements who could not be re-educated.[2684] NUON Chea confirmed that the CPK's "political orders" that the super-traitors "were to be liquidated", were in fact carried out.[2685] According to NUON Chea, over time, due to suffering and hardship, the party line concerning class struggle and hatred was engrained in the people in the liberated zones.[2686] The Chamber is satisfied that, in view of his role in the Party leadership which designed and implemented the policies concerning forced population movement and the targeting of Khmer Republic officials, NUON Chea knew of these policies and the resulting patterns of conduct.[2687]

[2678] *See* Section 3: Historical Background, paras 132-133, 144-145; Section 10: Movement of the Population (Phase One), para. 547; Section 14: Joint Criminal Enterprise, paras 735, 788.
[2679] Section 3: Historical Background, paras 132-133, 144-145; Section 10: Movement of the Population (Phase One), para. 547; Section 14: Joint Criminal Enterprise, paras 735, 788.
[2680] Section 3: Historical Background, paras 124-127; Section 14: Joint Criminal Enterprise, para. 816.
[2681] Section 3: Historical Background, paras 133-134; Section 10: Movement of the Population (Phase One), paras 541-542.
[2682] Section 3: Historical Background, paras 118, 120-123; Section 14: Joint Criminal Enterprise, paras 814.
[2683] Section 14: Joint Criminal Enterprise, para. 815.
[2684] Section 14: Joint Criminal Enterprise, para. 815.
[2685] Section 14: Joint Criminal Enterprise, para. 824, fn. 2597.
[2686] Section 14: Joint Criminal Enterprise, para. 734.
[2687] *See* Section 7: Roles and Functions – Nuon Chea, paras 347-348.

845. Further, living conditions throughout the country, the Party's plan to forcibly transfer the population of Phnom Penh and its justification for it, the policy to strategically allocate labour during movement of population (phase two), the differential treatment of New People, and the Party's instructions to eliminate and maintain vigilance against all elements and "remnants" of the Khmer Republic were no secret within the Party hierarchy. These realities, actions and policies were discussed, praised and encouraged during education sessions, conferences, independence day celebrations, congresses and in *Revolutionary Flag* and *Youth* magazines throughout the DK era,[2688] before, during and after the crimes were committed. NUON Chea attended meetings where these matters were discussed and instructions given.[2689] The Chamber has found that NUON Chea was one of the principal authors of *Revolutionary Flag*[2690] and is satisfied that he had knowledge of these issues discussed in the publication.

846. The crimes falling within the scope of Case 002/01 formed part of consistent patterns of conduct carried out throughout the country before 17 April 1975 and continuing thereafter.[2691] In view of his access to reports and information concerning living conditions in the countryside and the implementation of the common purpose and policies, the Chamber considers that the only reasonable inference is that NUON Chea knew of these consistent patterns of conduct before, during and after the crimes falling within the scope of Case 002/01 were committed and of which they formed part.[2692] Further, the Chamber is satisfied that, NUON Chea knew of the substantial likelihood, consistent with these patterns of conduct, that the implementation of plans and policies to evacuate urban areas and target Khmer Republic officials would result in the crimes committed in the course of the first two phases of population transfer and at Tuol Po Chrey.

[2688] *See e.g.*, Section 6: Communication Structure, para. 265; Section 10: Movement of the Population (Phase One), paras 544-545.
[2689] Section 3: Historical Background, paras 133, 144-145; Section 10: Movement of the Population (Phase One), para. 531; Section 11: Movement of the Population (Phase Two), para. 577.
[2690] Section 6: Communication Structure, para. 264; Section 7: Roles and Functions – Nuon Chea, para. 311.
[2691] Section 3: Historical Background, paras 117-118, 120-123.
[2692] *See also* Section 14: Joint Criminal Enterprise, para. 798.

15.1.2. *Knowledge Concurrent with the Commission of the Crimes*

847. NUON Chea, as CPK Deputy Secretary and as a full rights member of both the CPK Central Committee and its Standing Committee,[2693] was privy to information which would necessarily have put him on notice, at the time of the crimes, that the crimes were being committed. During Central or Standing Committee meetings, the members received reports, discussed and planned the conduct of the democratic and socialist revolutions, the evacuation of Phnom Penh, the subsequent forced population movements, the living conditions in the countryside and the elimination of enemies and elements of the Khmer Republic regime.[2694] The Chamber has found that the Central Committee's function, in part, was to analyse the implementation of the Party's policies, to correct abuses and to issue directives concerning the living conditions in the countryside.[2695] The minutes of meetings demonstrate that the Standing Committee (including NUON Chea) received reports of, and discussed, food and medicine shortages and illnesses.[2696] As well as attending formal Party meetings, NUON Chea also resided, dined and met informally with other senior Party leaders,[2697] with whom he discussed topics including the conduct of the democratic and social revolutions, two phases in the evolution of the common purpose.[2698] In addition to these roles, NUON Chea was specifically delegated responsibility for social action policy.[2699] Additionally, the Chamber has found that by virtue of his seniority within the leadership of the CPK, NUON Chea had oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period.[2700] Accordingly, the Chamber is satisfied that NUON Chea obtained knowledge of the crimes in his capacity as Deputy Secretary and through his membership of the Central and Standing Committees.

[2693] Section 7: Roles and Functions – Nuon Chea, paras 304, 313, 315-316.
[2694] Section 3: Historical Background, paras 127, 132-133, 144; Section 6: Communication Structure, para. 271; Section 10: Movement of the Population (Phase One), para. 547; Section 11: Movement of the Population (Phase Two), paras 577, 585, 604, 615; Section 14: Joint Criminal Enterprise, paras 729, 757, 768, 771, 788, 807, 816.
[2695] Section 14: Joint Criminal Enterprise, para. 749. *See also* Section 8: Roles and Functions – Khieu Samphan, para. 384
[2696] Section 14: Joint Criminal Enterprise, para. 768.
[2697] Section 6: Communication Structure, para. 271; Section 7: Roles and Functions – Nuon Chea, para. 317.
[2698] Section 14: Joint Criminal Enterprise, paras 731-776.
[2699] As well as Party Affairs, Culture, Propaganda and Education policy: *See* Section 5: Administrative Structures, para. 232.
[2700] Section 7: Roles and Functions – Nuon Chea, para. 348.

848. The CPK leadership also received reports from military leaders on progress regarding battlefield situations at the April 1975 meeting at B-5.[2701] Numerous surviving telegrams concerning the situation on the battlefields as well as on the border with Vietnam were copied to NUON Chea.[2702] The Chamber has also found that the military forces that attacked Phnom Penh were under the command of Zone secretaries, who themselves sought and received instructions from POL Pot, NUON Chea, SON Sen and other senior leaders at B-5.[2703] Accordingly, the Chamber is satisfied that the CPK leadership received detailed information about the activities of Khmer Rouge troops and the situation on the ground.

15.1.2.1. *Movement of Population (Phase One)*

849. NUON Chea admitted that he participated in the decision to evacuate Phnom Penh.[2704] He said that, immediately following the evacuation of Phnom Penh, he witnessed evacuees walking on the road from Phnom Penh and acknowledged that it was difficult for them to travel. He admitted that he subsequently he saw dead bodies in houses in Phnom Penh.[2705] NUON Chea also acknowledged that there were deaths of many kinds during the DK period, including those due to illness and starvation both during evacuations and thereafter.[2706] The Chamber is therefore satisfied that NUON Chea knew of the commission of the crimes during the first phase of population transfer at the time of their commission.

15.1.2.2. *Movement of Population (Phase Two)*

850. NUON Chea admitted that he knew that people were moved during the second phase of population movement.[2707] He acknowledged that the Party was aware that people would sacrifice and face hardship as a result of the evacuations.[2708] As noted above, NUON Chea also acknowledged that there were deaths of many kinds during the DK period, including those due to illness and starvation both during evacuations

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[2701] Section 3: Historical Background, paras 145-146.
[2702] Section 7: Roles and Functions – Nuon Chea, para. 338.
[2703] Section 14: Joint Criminal Enterprise, para. 807.
[2704] Section 3: Historical Background, paras 133, 144-145.
[2705] *See* Section 14: Joint Criminal Enterprise, para. 785.
[2706] *See* Section 14: Joint Criminal Enterprise, para. 785.
[2707] *See* Section 11: Movement of the Population (Phase Two), para. 628.
[2708] *See e.g.* Section 14: Joint Criminal Enterprise, para. 785.

and thereafter.[2709]

851. The evidence put before the Chamber shows that during phase two, there was an ongoing pattern of forced movements between rural areas characterised by ill-treatment, discrimination against 'New People', and deaths resulting from the conditions of transport, terror-inducing acts of Khmer Rouge soldiers and the use of force.[2710] Zones and Autonomous Sectors reported to the Centre concerning population movements during phase two.[2711] Thousands of people were moved by boat, truck and train to, from and past Phnom Penh, a city otherwise largely deserted.[2712] The Chamber is satisfied that through his travels during the DK period in particular, NUON Chea was aware of the living conditions throughout the country.[2713] During the DK period, NUON Chea visited construction and agricultural projects and met with Zone leaders.[2714] He also met with Zone and autonomous Sector secretaries and officials, such as ROS Nhim, in Phnom Penh.[2715] During August 1975, the Standing Committee visited the Northwest Zone and witnessed the shortages of both food supplies and medication experienced by the New People.[2716] NUON Chea either travelled with the Standing Committee or was later made aware of the findings of that visit.

852. The Chamber is therefore satisfied that NUON Chea knew of the crimes committed in the course of movement of population phase two at the time of their commission.

15.1.2.3. *Executions at Tuol Po Chrey*

853. On and after 17 April 1975, further towns throughout Cambodia were liberated, and were accompanied by the arrest, execution, disappearance and other ill-treatment of Khmer Republic officials immediately before, during or immediately after

[2709] *See* Section 14: Joint Criminal Enterprise, para. 785.
[2710] Section 11: Movement of the Population (Phase Two), paras 613-614, 627-657; Section 14: Joint Criminal Enterprise, paras 800-803.
[2711] Section 14: Joint Criminal Enterprise, para. 798.
[2712] Section 11: Movement of the Population (Phase Two), paras 591-595.
[2713] *See* Section 11: Movement of the Population (Phase Two), para. 577.
[2714] *See* Section 7: Roles and Functions – Nuon Chea, para. 317; Section 14: Joint Criminal Enterprise, para. 773.
[2715] *See* Section 14: Joint Criminal Enterprise, para. 772.
[2716] *See* Section 11: Movement of the Population (Phase Two), paras 585-587; Section 14: Joint Criminal Enterprise, para. 745.

evacuations.[2717] Consistent with this ongoing pattern of conduct, after the liberation of Pursat, Khmer Republic officials were assembled by deceptive means and executed at Tuol Po Chrey. The executions at Tuol Po Chrey occurred on 25 or 26 April 1975.[2718] NUON Chea was one of the principal authors of *Revolutionary Flag*, [2719] through which the Party's policy concerning "enemies" was disseminated, and the elimination of enemies, including former Khmer Republic officials, was praised.[2720] The Party's policy concerning "enemies" was disseminated through indoctrination sessions conducted by Party leaders, including NUON Chea.[2721]

854. Although there is no evidence that he knew of the specific nature of the crimes committed at Tuol Po Chrey, the Chamber is satisfied that NUON Chea knew of the ongoing pattern of targeting of Khmer Republic officials for arrest, execution, disappearance and other ill-treatment after an area was liberated and evacuated. Therefore he knew that Pursat like other liberated cities all over the country were to be evacuated, and that, in accordance with the policy targeting Khmer Republic officials at least some of those found in Pursat were executed at the time the executions at Tuol Po Chrey occurred.

15.1.3. ***Knowledge Arising After the Commission of the Crimes***

855. After the commission of the crimes in phases one and two of movement of population and at Tuol Po Chrey, the policies and resulting crimes were discussed during education sessions, conferences, Independence Day celebrations, congresses, in policy documents, and in *Revolutionary Flag* and *Revolutionary Youth* magazines. NUON Chea not only had access to *Revolutionary Flag* and *Revolutionary Youth* magazines, but as noted above, he was one of principal authors of *Revolutionary Flag*.

856. NUON Chea also had access to reports by other States, international organisations and international news agencies. These external sources of information publicly reported allegations of atrocities, during and after their commission,

[2717] Section 11: Movement of the Population (Phase Two), paras 613-614, 649-657; Section 14: Joint Criminal Enterprise, paras 830-834.
[2718] Section 12: Tuol Po Chrey, paras 662, 668, 670, 681.
[2719] Section 6: Communication Structure, para. 264; Section 7: Roles and Functions – Nuon Chea, para. 311.
[2720] Section 6: Communication Structure, paras 265; Section 14: Joint Criminal Enterprise, para. 818.
[2721] Section 14: Joint Criminal Enterprise, para. 818.

including forced transfers, inhumane conditions, discrimination against 'New People' and former Khmer Republic officials, targeting for arrest, executions and disappearances of former Khmer Republic officials, and deaths during phases one and two of population movements.[2722] The Chamber has found that the CPK Standing Committee ordered the DK Ministry of Propaganda and Information to monitor foreign news reports closely and that detailed procedures were established for the summarising and reporting of news by the Ministry of Propaganda to the Standing Committee.[2723] The Chamber is satisfied that through these Ministry reports, NUON Chea, a member of the Standing Committee, was made aware of news reports detailing the crimes.

857. On the basis of the foregoing, the Chamber finds that NUON Chea was also on notice of the crimes after their commission.

15.2. The Zones' Responsibility for Crimes Committed

858. The NUON Chea Defence submits that: (a) it was the Zones and not the Party Centre which bore responsibility for the implementation of the plan to evacuate Phnom Penh and the second population movement, as well as events at Tuol Po Chrey;[2724] and (b) the evacuations themselves were the responsibility of the military for which NUON Chea was not responsible.[2725]

859. While accepting that it fell to the Zones to implement the Party's policies concerning population movements and targeting of Khmer Republic officials, the Chamber is satisfied that the Zones were not acting independently. Rather, the Party Centre, including NUON Chea, relied upon the Zones, whose secretaries were often members of the Central or Standing Committees, and on the CPK's hierarchical structure to give effect to its policies and decisions. This was both consistent with the provisions of the CPK Statute[2726] and demonstrated in reality. The Central Committee, of which NUON Chea was the Deputy Secretary, was responsible for

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[2722] Section 6: Communication Structure, paras 267-268.
[2723] Section 6: Communication Structure, para. 267.
[2724] NUON Chea Closing Brief, E295/6/3, 26 September 2013, paras 305-315, 318-319, 412-421, 427-438, 452-454; T. 14 December 2011 (Accused NUON Chea), pp. 26-29.
[2725] T. 14 December 2011 (Accused NUON Chea), p. 26.
[2726] Section 6: Communication Structure, para. 269.

instructing Zone-level, Sector-level and other Party organisations to carry out activities according to the Party's political line, and instructions were relayed downwards from the Party Centre to the lower Zones in turn.[2727]

860. The Chamber has found that the evacuation of Phnom Penh and subsequent population movements were effected in the same manner.[2728] Similarly, while the September 1975 Policy Document called on the Zones, Sectors and Districts to make plans and undertake the necessary preparations to meet the Party's goals,[2729] it also incontrovertibly evidences that it was the Party Centre that designed, coordinated and authorised population movements.[2730] The Party also controlled the means and modes of transportation by which the subsequent population movements were effected where Zone, Sector and District committees had to authorise transfers or movements.[2731] Party directives concerning enemies and targeting of Khmer Republic officials were also disseminated from the Party Centre to lower-level cadres via trainings, propaganda and *Revolutionary Flag* publications for implementation. Accordingly, the Chamber rejects this submission.

15.3. Commission through a Joint Criminal Enterprise

15.3.1. *Contribution*

861. The Chamber is satisfied that NUON Chea, as Deputy Secretary of the Party who had ultimate decision-making power with POL Pot,[2732] was not only involved in the initial development of DK policies but also actively involved throughout the period relevant to Case 002/01 in their continuing implementation. Notably, NUON Chea attended meetings at which plans for the evacuation of Phnom Penh, with which he agreed, were discussed. NUON Chea also knew and approved of subsequent forced population movements and contributed to developing and promoting the DK policy of

[2727] Section 5: Administrative Structures, para. 202; Section 6: Communication Structure, paras 269, 286.
[2728] Section 3: Historical Background, paras 148-151.
[2729] Section 11: Movement of the Population (Phase Two), para. 604.
[2730] Notably, the Committee's decision to send 20,000 people to Preah Vihear was in response to the request of the latter's authorities to receive 50,000 people
[2731] Section 11: Movement of the Population (Phase Two), paras 591-599; Section 14: Joint Criminal Enterprise, para. 809.
[2732] Section 7: Roles and Functions – Nuon Chea, para. 348.

targeting former Khmer Republic officials.

862. As set out in further detail below, the Trial Chamber is satisfied that NUON Chea participated in the common purpose of the joint criminal enterprise, making a significant contribution. In order to hold NUON Chea responsible for crimes committed by Khmer Rouge soldiers who are not members of the JCE, it must be shown that the crime can be imputed to a member of the JCE and that this member, using a direct perpetrator, acted in accordance with the common plan.[2733] The Chamber recalls its finding that the crimes can be imputed to various members of the JCE.[2734] The Chamber's findings below that NUON Chea planned, ordered, instigated, aided and abetted the crimes at issue (Section 15.4) also demonstrate a sufficient link between the direct perpetrators and NUON Chea.[2735] The Chamber is therefore satisfied that the crimes can be directly imputed to NUON Chea.

15.3.1.1. *Policy development: Planning the common purpose*

863. NUON Chea was appointed Deputy Secretary of the Party at the First Party Congress in September 1960, where he played an instrumental part in the formulation of the Party's stance on revolutionary violence and use of armed struggle to achieve its goals. He also participated in the Second and Third Party Congresses (in February 1963 and 1971) where the same political line was affirmed.[2736] At the First Party Congress, the Party also outlined its goal of socialist revolution and decreed that foreign imperialists, their "lackeys" or henchmen and the "feudalists, capitalists and reactionaries" were all class enemies.[2737] In his capacity as the Party's Deputy Secretary and with his contribution to the Party stance, NUON Chea helped initiate and officially approved this Party line.

864. In 1967 or early 1968, NUON Chea, alongside other leaders, determined that

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[2733] Section 13: Applicable Law: Individual Criminal Responsibility, para. 693.
[2734] Section 14: Joint Criminal Enterprise, paras 807-810, 836.
[2735] *Krajišnik* Appeal Judgement, para. 226 (A sufficient link exists when a JCE member explicitly or implicitly requested a non-JCE member to commit a crime, or instigated, ordered, encouraged or otherwise availed himself of the non-JCE member to commit the crime forming part of the common purpose).
[2736] Section 3: Historical Background, paras 87-89, 95; Section 7: Roles and Functions – Nuon Chea, para. 334; Section 14: Joint Criminal Enterprise, paras 726-727.
[2737] Section 14: Joint Criminal Enterprise, para. 726.

the armed revolution had to begin.[2738] As the revolution developed, NUON Chea met with fellow Party leaders and advocated that it was time for armed struggle against officials of the Khmer Republic regime.[2739] In October 1970, the Central Committee, of which NUON Chea and other significant political leaders were part, discussed a plan to liberate Cambodia from American imperialists and the Khmer Republic, and confirmed the Party's policy of self-reliance and independence.[2740] In the following five years, NUON Chea and other Party leaders met regularly concerning the ongoing revolution and the administration of liberated Zones.[2741]

865. Over the course of 1974-1975, NUON Chea participated in meetings discussing the liberation and evacuation of Phnom Penh. He has admitted to participating in the decision to evacuate Phnom Penh at a meeting of CPK leaders in June 1974.[2742] After this meeting, NUON Chea travelled to Vietnam to inform Vietnamese leaders of the CPK plan to launch the final attack on Phnom Penh and to request further supplies of weapons, although the latter aim was ultimately unsuccessful.[2743] At the last meeting in early April 1975 at B-5, very shortly before the attack on Phnom Penh, NUON Chea again agreed with the decision to forcibly transfer the capital's entire population.[2744]

866. NUON Chea and other key leaders also participated in the May 1975 meeting at the Silver Pagoda that discussed the leadership's plan to bring about socialist revolution by implementing collectivisation.[2745] Implementation of this plan effectively precluded any possibility that, with few exceptions, those removed from Phnom Penh would return to their homes. NUON Chea did not oppose the plan.

867. After the Standing Committee visited the Northwest Zone in August 1975, it

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[2738] Section 7: Roles and Functions – Nuon Chea, para. 334; Section 14: Joint Criminal Enterprise, para. 729.
[2739] Section 7: Roles and Functions – Nuon Chea, para. 334; Section 14: Joint Criminal Enterprise, para. 729.
[2740] Section 14: Joint Criminal Enterprise, para. 732.
[2741] Section 14: Joint Criminal Enterprise, para. 732.
[2742] Section 3: Historical Background, para. 133.
[2743] Section 3: Historical Background, para. 141.
[2744] Section 3: Historical Background paras 132-134, 144-145; Section 7: Roles and Functions – Nuon Chea, para. 335.
[2745] Section 14: Joint Criminal Enterprise, paras 740-743.

decided to reallocate an additional 400,000 to 500,000 people to the region.[2746] The Standing Committee's report of this visit offered "Angkar's guiding opinions" on key questions of 'workforce arrangements,' cooperatives and the handling of cities. The Standing Committee's report illustrates the hostile attitudes of Committee members towards New People. It outlined the Committee's plan to force all New People into cooperatives.[2747] The Chamber finds that the report outlines a calculated plan by the leadership to augment and improve national defence (by creating cooperatives) and the economy (by population movements). Given that the Standing Committee met on a weekly basis and more frequently during times of emergency,[2748] the Chamber is satisfied that even if NUON Chea did not personally participate in the visit to the Northwest Zone he was made aware of the visit's outcomes, the decisions subsequently taken and the issues faced by the New People in that Zone by means of the written report of the Standing Committee. In view of NUON Chea's prior statements,[2749] the Chamber is also satisfied that he shared the leadership's views expressed in the report concerning New People.

868. In September 1975, the Party leadership disseminated a document analysing progress in implementing the Party's agricultural policy in the previous four to five months.[2750] The policy document outlined the plan to move more than half a million people to other Zones in order to meet rice production requirements and acknowledged that medicine and food shortages affected the 'New People' who were forcibly evacuated from Phnom Penh in particular.[2751] The document expressly examined the Party lines on 'Social Action' and 'Culture', both portfolios for which NUON Chea was assigned responsibility at a Standing Committee meeting on 9 October 1975.[2752] On that same day the Standing Committee approved the general

[2746] Section 11: Movement of the Population (Phase Two), paras 585-587; Section 14: Joint Criminal Enterprise, para. 745.
[2747] Section 14: Joint Criminal Enterprise, para. 745.
[2748] Section 5: Administrative Structures, para. 203.
[2749] *See e.g.*, Section 14: Joint Criminal Enterprise, para. 787; Section 15: The Criminal Responsibility of Nuon Chea, para. 866.
[2750] Section 14: Joint Criminal Enterprise, paras 748-749.
[2751] Section 11: Movement of the Population (Phase Two), para. 604; Section 14: Joint Criminal Enterprise, para. 748.
[2752] Section 7: Roles and Functions – Nuon Chea, para. 326; Section 14: Joint Criminal Enterprise, paras 749, 752.

policy of building and defending the country "based on the force of the masses."[2753] During that time, NUON Chea continued as Deputy Secretary of the Party[2754] and as a full-rights member of the Standing Committee. Between September and October 1975, the Standing Committee, including NUON Chea, met to discuss policies to defend and build the country.[2755] The policy to organise manpower according to needs on a seasonal basis was also later approved at the First Nationwide Economics Congress and widely reported in the October-November 1975 issue of the *Revolutionary Flag*.[2756] In view of the foregoing, the Chamber finds that NUON Chea was aware of and supported the planned population movements affecting more than half a million people.

869. Through his contributions at Party Congresses and other meetings with other senior CPK leaders, the Chamber is satisfied that NUON Chea not only shared support for the common plan, but played a key role in formulating its content.

15.3.1.2. *Propaganda, Education and Public Training: Disseminating and Implementing the Common Purpose*

870. The Chamber has found that, both in the years preceding the evacuation of Phnom Penh and during the subsequent DK regime, NUON Chea focused actively on propaganda and training Khmer Rouge cadres in the countryside, advocating the Party's revolutionary and economic policies, the formation of cooperatives and vigilance against enemies.[2757] NUON Chea also appeared as the chairman, trainer or speaker at a range of meetings, trainings or study sessions where he promoted the Party line of vigilance against internal and external enemies to lower-level followers.[2758]

871. Shortly after the May 1975 meeting at the Silver Pagoda, NUON Chea, along with POL Pot and other key leaders, led a series of meetings. Between 20 and 25 May 1975 NUON Chea and other leaders instructed representatives from military units and all District, Sector and Zone secretaries on the Party's policies concerning the

[2753] Section 11: Movement of the Population (Phase Two), para. 604.
[2754] Section 7: Roles and Functions – Nuon Chea, para. 313.
[2755] Section 11: Movement of the Population (Phase Two), para. 604.
[2756] Section 14: Joint Criminal Enterprise, para. 753.
[2757] Section 7: Roles and Functions – Nuon Chea, paras 310, 325.
[2758] Section 7: Roles and Functions – Nuon Chea, paras 325, 347.

organisation of cooperatives, elimination of private property, prohibition of currency and markets, and the building of dams and canals. In the following months, the lower levels implemented the instructions they had received.[2759]

872. The Chamber recalls that from late 1975 until 1977 numerous publications of the *Revolutionary Flag*, which NUON Chea played an instrumental role in issuing,[2760] advocated the need to move manpower on the basis of need and party strategy.[2761] Numerous *Revolutionary Flag* publications subsequently exhorted CPK cadres to wage class struggle against, 'feudalists'. *Revolutionary Flag* publications made it clear that 'feudalists' referred to landowners and aristocrats.[2762]

873. As evidenced by the *Revolutionary Flag* publications, his speeches and public statements, NUON Chea helped divide the population, differentiating between peasant 'Base People' and 'New People', their urban counterpart.[2763] In particular, NUON Chea argued strongly that urban people were corrupt[2764] and that cities harboured 'enemies.'[2765] 'Class struggle' was subsequently entrenched as a Party priority in the 1976 CPK Statute adopted at the Fourth Party Congress.[2766] On the pretext of socialist revolution and class-struggle, the Party in which NUON Chea was a driving force indoctrinated its followers with a hatred for city-people which continued throughout the DK period.[2767] The Party's and NUON Chea's statements concerning 'enemies' and 'class struggle' sowed seeds of distrust among Party cadres and the majority of Cambodia's rural population who categorised Phnom Penh's evacuees, and eventually all city people, as 'New People' who could not be trusted, and treated them with suspicion.[2768]

[2759] Section 14: Joint Criminal Enterprise, paras 743-744.
[2760] Section 6: Communication Structure, para. 264; Section 7: Roles and Functions – Nuon Chea, para. 311.
[2761] The Chamber has reviewed relevant portions of *Revolutionary Flag* magazines for the period of 1975-1977 in the section addressing Population Movement (Phase two).
[2762] Section 14: Joint Criminal Enterprise, para. 726.
[2763] Section 14: Joint Criminal Enterprise, para. 815; Section 10: Movement of the Population (Phase One), para. 517; Section 11: Movement of the Population (Phase Two), para. 621.
[2764] Section 3: Historical Background, para. 111.
[2765] Section 14: Joint Criminal Enterprise, para. 787; Section 3: Historical Background, para. 111.
[2766] Section 14: Joint Criminal Enterprise, para. 755; Section 10: Movement of the Population (Phase One), fn. 1548; Section 14: Joint Criminal Enterprise, para. 840.
[2767] Section 14: Joint Criminal Enterprise, para. 787.
[2768] Section 10: Movement of the Population (Phase One), para. 517; Section 11: Movement of the Population (Phase Two), paras 621-623; Section 14: Joint Criminal Enterprise, para. 787.

874. The Chamber finds that through his role in the propaganda campaign (including his instrumental role in issuing the *Revolutionary Flag*) and training of cadres both before and after April 1975, NUON Chea contributed substantially to the dissemination and implementation of the common purpose.

15.3.2. ***Intent***

875. As Deputy Secretary of the CPK, full-rights member of the Central and Standing Committees, and by virtue of his close relationship with POL Pot and other top CPK leaders,[2769] NUON Chea was a key actor responsible for the formulation of Party policies. He also participated in the meetings prior to April 1975 approving the plan to forcibly transfer the population of Phnom Penh and at all times thereafter was a key member of the Committees that approved continuous population movements within Cambodia within the time period relevant to Case 002/01. He was also a strong proponent of waging 'class struggle' against, *inter alia*, Khmer Republic officials and played a leading role in propaganda and training of cadre to achieve this. In the Chamber's view, the significance of his role is further heightened given the limited number of people who constituted the 'upper echelon'. Accordingly, the Chamber is satisfied that, as a member of the JCE,[2770] NUON Chea contributed significantly to the realisation of the common purpose and that he intended to further the implementation of the common purpose through his actions.

876. In light of the foregoing, the Chamber finds that NUON Chea shared the intent of the other members of the JCE to bring about the common purpose[2771] through implementation of the Party's policies on population movements and targeting Khmer Republic officials. He shared with the other participants of the JCE the intent to commit the other inhumane acts of forcible transfer and attacks against human dignity, murder committed during population movements (phases one and two), as well as murder and extermination as crimes against humanity at Tuol Po Chrey. Further, in light of his contribution to developing the Partly line on class-struggle and the policy to target Khmer Republic officials, the Chamber is also satisfied NUON

[2769] Section 7: Roles and Functions – Nuon Chea, paras 313, 315, 317.
[2770] Section 14: Joint Criminal Enterprise, para. 777.
[2771] Section 14: Joint Criminal Enterprise, para. 777.

Chea shared with the other members of the JCE the requisite discriminatory intent for the crime of political persecution (committed during population movements (phases one and two)).

15.3.3. ***Conclusion***

877. The Trial Chamber finds that NUON Chea through a JCE (basic form) committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey. He shared with the other members of the JCE the intent to commit these crimes.

15.4. Other modes of liability

15.4.1. ***Crimes Committed During Movement of Population (Phase One)***

15.4.1.1. *Planning*

878. The Chamber is satisfied that NUON Chea, with others, planned the forced transfer of the inhabitants of Phnom Penh which involved the crimes against humanity of murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity. The final offensive to liberate the country and the policy to evacuate cities were planned and ordered at a series of meetings between 1973 and early April 1975.[2772] NUON Chea was a full rights member of the Central and Standing Committees,[2773] who had the right to participate in meetings and did in fact participate in meetings.[2774]

879. At the June 1974 meeting, the Central Committee discussed in detail the Party's "success" at Oudong, where the population, including Khmer Republic officials, was forcibly evacuated, mistreated and many were executed.[2775] Having

[2772] Section 3: Historical Background, paras 132-133, 144-145; Section 10: Movement of the Population (Phase One), para. 547; Section 14: Joint Criminal Enterprise, paras 735, 788.
[2773] Section 7: Roles and Functions – Nuon Chea, para. 315.
[2774] Section 7: Roles and Functions – Nuon Chea, paras 335, 340.
[2775] Section 3: Historical Background, paras 124-126, 134.

reviewed this experience and knowing that there were already food shortages throughout the country, and in particular in Phnom Penh, the Central Committee, including NUON Chea, nevertheless decided to empty urban areas, including Phnom Penh,[2776] of their inhabitants omitting any measures providing for the consent, health or well-being of those being transferred. The Chamber is therefore satisfied that those at the June 1974 meeting collectively drew up a plan that contemplated and involved the commission of the crimes committed in the course of phase one, namely murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity.

880. In early April 1975, senior leaders, including NUON Chea, met to address the evacuation of Phnom Penh. Prior experiences with the forced transfer of the population from urban areas to the countryside,[2777] which formed part of a consistent pattern of conduct beginning before April 1975[2778] were discussed and reviewed. NUON Chea and other attendees then affirmed the decision to forcibly transfer the population of Phnom Penh.[2779] However, despite reviewing prior experience with transfers of population characterised by suffering, discriminatory violence against 'New People' and Khmer Republic officials, and deaths resulting from the conditions of movement, use of force and acts of terror, no provision was made to address similar readily anticipated conditions during the planned transfer of the population of Phnom Penh. The Chamber is therefore satisfied that this plan contemplated and involved the commission of the crimes committed in the course of phase one.

881. The plan to transfer the population of Phnom Penh, which NUON Chea and other members of the Standing Committees and Central Committees designed, preceded and substantially contributed to the crimes perpetrated during phase one. This plan was disseminated through the ranks after the meetings at which the decision was made.[2780] Acting upon these plans and orders, the Khmer Rouge military began implementing the plan only hours after liberating Phnom Penh. As planned, and

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[2776] Section 3: Historical Background, paras 134, 141, 145-146; Section 10: Movement of the Population (Phase One), paras 535-540; Section 14: Joint Criminal Enterprise, paras 737, 788.
[2777] Section 3: Historical Background paras 144-145.
[2778] Section 14: Joint Criminal Enterprise, paras 791-794.
[2779] Section 3: Historical Background paras 144-146.
[2780] Section 3: Historical Background paras 133-134, 141, 148-151.

consistent with a pattern of conduct before and after 17 April 1975,[2781] the population of Phnom Penh was evacuated by force, coercion and deception, with little if any accommodation or assistance. Many of those who were forced to evacuate died and Khmer Republic officials were targeted for arrest and execution.[2782]

882. The Chamber has found that, in planning to evacuate Phnom Penh, NUON Chea knew that the evacuation would result in mass killings, including of Khmer Republic officials, and acted in the knowledge that many people would die during the course of the evacuation of Phnom Penh and subsequent population movements.[2783] The Chamber is satisfied that in planning the transfer of the population of Phnom Penh NUON Chea intended, or at a minimum was aware of the substantial likelihood, that crimes would be committed upon the execution of the plan.

883. The Chamber is therefore satisfied that NUON Chea is criminally responsible for planning the movement of population (phase one), a plan which involved the commission of the crimes against humanity of murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity.

15.4.1.2. *Ordering*

884. The Chamber has already indicated that, while it is not necessary to establish a formal superior-subordinate relationship, ordering requires that an accused is in fact or in law in a position of authority to instruct another person to commit a crime. Evidence must also show that the accused, alone or collectively with others, issued, passed down or otherwise transmitted an order, including through intermediaries. The Chamber is satisfied that NUON Chea ordered the crimes committed in the course of movement of population (phase one). NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party,[2784] and used *de jure* and *de facto* authority to instruct lower-level Khmer Rouge cadres and soldiers to commit crimes of murder, extermination, political persecution and the other inhumane acts of forced

[2781] Section 3: Historical Background paras 144-146; Section 14: Joint Criminal Enterprise, paras 791-794.
[2782] Section 10: Movement of the Population (Phase One), paras 547-574.
[2783] Section 15: The Criminal Responsibility of Nuon Chea, paras 840, 842-846.
[2784] Section 7: Roles and Functions – Nuon Chea, para. 348.

transfer and attacks against human dignity. After the June 1974 meeting at which it was decided that Phnom Penh would be forcibly evacuated, meeting attendees were instructed to disseminate information about the conclusions reached at the meeting in their respective Zones of competence.[2785] After a further meeting in early-April 1975 at which the evacuation was discussed, orders were again conveyed to military commanders for implementation.[2786] The decision to forcibly evacuate Phnom Penh was subsequently executed in April 1975. NUON Chea confirmed that the CPK's "political orders" that the super-traitors "were to be liquidated", were in fact carried out.[2787]

885. The Chamber is satisfied that the decisions and instructions of the Party Centre, which included NUON Chea, amounted to orders which were implemented,[2788] and that the lower-level cadres accepted the authority and decisions of the CPK Party. These orders preceded and substantially contributed to the commission of the crimes. Lower-level Khmer Rouge cadres and soldiers began implementing the orders hours after liberating Phnom Penh.

886. Adopting the reasoning outlined above with respect to "planning",[2789] the Chamber is satisfied that in ordering the evacuation of Phnom Penh and subsequent population movements, NUON Chea intended, or at a minimum was aware of the substantial likelihood, that crimes would be committed in execution of the Party's instructions. The Chamber is therefore satisfied that NUON Chea is criminally responsible for ordering the crimes against humanity of murder, extermination, political persecution and the other inhumane acts of forced transfer and attacks against human dignity which were committed during movement of population (phase one).

15.4.1.3. *Instigating*

887. As previously indicated, instigating requires that the Accused's conduct

[2785] Section 3: Historical Background para. 141.
[2786] Section 3: Historical Background paras 148-151.
[2787] Section 14: Joint Criminal Enterprise, para. 824.
[2788] It is clear that the CPK leadership considered the same. *See Revolutionary Flag*, E3/193, August 1977, p. 2, ERN (En) 00399222, (Kh) 00062948, (Fr) 00611826 (on 25 July 1977 at the West Zone Cadre Conference, a representative of the Party Centre gave a "presentation regarding the instructions of the Party on a number of important matters" that must be implemented in the second semester of 1977).
[2789] Section 15: The Criminal Responsibility of Nuon Chea, para. 882.

prompted the commission of the crimes meaning that his act or omission *substantially contributed* to the conduct of the direct perpetrator who committed the crime. The Chamber has found that NUON Chea collectively planned the forced transfer of the inhabitants of Phnom Penh and that this plan substantially contributed to the commission of the crimes. The Chamber has also found that NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party, and used this *de jure* and *de facto* authority to instruct lower-level Khmer Rouge cadres and soldiers to commit crimes that occurred during movement of population (phase one). NUON Chea played a leading role in the indoctrination of Khmer Rouge cadres and soldiers particularly regarding training cadre on maintaining vigilance against enemies, and in the strict indoctrination of peasants on class struggle which included the identification of all 'New People' and former Khmer Republic officials as enemies. The Chamber is satisfied that NUON Chea's involvement, alongside other leaders, in formulating the policies to forcibly transfer the population and to target certain groups, preceded and substantially contributed to the crimes which were committed in the course of movement of population (phase one). Further, in view of NUON Chea's positions of authority at the time of the evacuation of Phnom Penh, the Chamber is satisfied his trainings, statements and involvement in issuing *Revolutionary Flag* were understood by lower-level Khmer Rouge cadres and soldiers prompting them to commit crimes against those considered enemies. This conduct also substantially contributed to the crimes which were committed in the course of movement of population (phase one). Therefore the Chamber is satisfied that, through his acts NUON Chea prompted the perpetrators who committed the crimes during movement of population (phase one).

888. Finally adopting the reasoning outlined above with respect to "planning",[2790] the Chamber is satisfied that in ordering the evacuation of Phnom Penh and subsequent population movements, NUON Chea intended, or at a minimum was aware of the substantial likelihood, that crimes would be committed in execution of the Party's instructions. The Chamber is therefore satisfied that NUON Chea is criminally responsible for instigating the crimes against humanity of murder, extermination, political persecution and the other inhumane acts of forced transfer and

[2790] Section 15: The Criminal Responsibility of Nuon Chea, para. 882.

attacks on human dignity which were committed during movement of population (phase one).

15.4.1.4. *Aiding and abetting*

889. The Trial Chamber is satisfied that NUON Chea provided encouragement and moral support to the perpetrators of the crimes committed during movement of population (phase one). This encouragement and moral support manifested itself through his role, before and after the crimes, in propaganda and training of cadre advocating the class struggle, justifying urban evacuations, and praising past crimes.[2791]

890. NUON Chea's encouragement and moral support had a substantial effect on the commission of crimes during movement of population (phase one). NUON Chea's words and actions in disseminating the forced movement and targeting policies to cadres and in advocating implementation of the policies encouraged the perpetrators to commit the crimes. Further, the CPK's approval of the policies had a legitimising effect which facilitated the realisation of the crimes.

891. NUON Chea knew that the crimes committed during movement of population (phase one) would likely be committed and that his conduct assisted or facilitated their commission. The Chamber is also satisfied that NUON Chea was aware of at least the essential elements of the crimes. The Chamber has already found that NUON Chea not only knew that the crimes committed during phase one would likely be committed, but that he intended them. With this knowledge and intent, NUON Chea provided encouragement and moral support to the perpetrators of crimes committed during phase one. Accordingly, the Chamber finds that NUON Chea is responsible for aiding and abetting the direct perpetrators to commit the crimes against humanity of murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity during movement of population (phase one).

[2791] Section 7: Roles and Functions – Nuon Chea, paras 324-329, 347; Section 14: Joint Criminal Enterprise, para. 818.

15.4.1.5. *Superior Responsibility*

892. Superior responsibility depends upon an accused's ability to exercise effective control over subordinates, that is the actual power to take reasonable and necessary measures to prevent or punish the crimes. According to the Closing Order and as relevant to Case 002/01, NUON Chea is responsible as a superior and exercised effective control over the RAK, Zone, Sector and District Committee members, local militia and cadre.[2792] The Chamber recalls that the crimes committed in the course of movement of population (phase one) were carried out by Khmer Rouge soldiers fighting as Cambodian People's National Liberation Armed Forces, and acting under the direct authority of their commanders and Zone secretaries.[2793] Crimes committed during subsequent population movements were carried out by Khmer Rouge soldiers from various Zones acting within the new structure of the RAK and officials acting within the established administrative hierarchy.[2794]

15.4.1.5.1. *Superior-Subordinate relationship*

893. At all times NUON Chea was Deputy Secretary of the Party and a full-rights member of the Standing and Central Committees. Along with POL Pot, the only person who was officially senior to him, NUON Chea exercised ultimate decision-making power.[2795] Although Khmer Rouge forces attacking Phnom Penh were under the direct control of the Zones, not the Party Centre,[2796] in the lead up to 1975, Khmer Rouge forces executed a number of orders from the CPK leadership, including from NUON Chea, to attack and forcibly transfer the inhabitants of the cities upon their capture.[2797] Further, in early-April 1975, immediately prior to the attack on Phnom Penh, Zone secretaries and military commanders were present at B-5 and reported to NUON Chea and to other senior leaders on the progress of Khmer Rouge advances on Phnom Penh.[2798]

[2792] Closing Order, para. 1559.
[2793] Section 5: Administrative Structures, para. 240; Section 10: Movement of the Population (Phase One), paras 460, 461, 470.
[2794] Section 5: Administrative Structures, paras 240, 242-243; Section 11: Movement of the Population (Phase Two), paras 578, 588, 591-599, 609, 617, 633, 637.
[2795] Section 7: Roles and Functions – Nuon Chea, para. 348.
[2796] Section 5: Administrative Structures, para. 240.
[2797] Section 14: Joint Criminal Enterprise.
[2798] Section 3: Historical Background, paras 144-146.

894. In view of the foregoing, the Chamber is satisfied that the most senior CPK members, including NUON Chea, played a key role in ordering particular attacks, which were subsequently carried out. The Chamber accepts the view of Expert Phillip SHORT that "[i]t would not have been possible for Zone commanders to act against or outside the broad policy consensus which had been laid down by the Centre."[2799] Accordingly, the Chamber finds that a *de facto* superior-subordinate relationship existed between NUON Chea and both the Zone secretaries and military commanders in April 1975.

895. Further, the CPK Statute provided that any party member or party echelon which opposed the Party's organizational stances violated Party discipline and was subject to sanctions, including removal from duties and rejection from the Party.[2800] The Chamber recalls that NUON Chea, in addition to being responsible for propaganda and training of cadre, was also assigned responsibility for discipline.[2801]

896. Accordingly, the Chamber is satisfied that by virtue of the CPK Statute and his assigned responsibilities, NUON Chea possessed both *de jure* and *de facto* authority to discipline insubordinate members of the Party and military.

15.4.1.5.2. *Knew or had reason to know*

897. As outlined above, the Chamber is satisfied that NUON Chea, through his senior leadership roles, knew or had reason to know, that Khmer Rouge forces would commit the crimes during the evacuation of Phnom Penh.[2802] For example, NUON Chea knew that the evacuation of Phnom Penh would result in mass killings of, Khmer Republic officials, among others.[2803]

15.4.1.5.3. *Failure to prevent or punish*

898. Despite evidence of deaths resulting from movements of the population prior to April 1975, NUON Chea failed to take any reasonable measures to prevent further deaths and killings during the forced evacuation of Phnom Penh. For example, there

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[2799] T. 8 May 2013 (Philip SHORT), p. 142.
[2800] Section 14: Joint Criminal Enterprise, para. 755.
[2801] Section 7: Roles and Functions – Nuon Chea, paras 328-329.
[2802] Section 15: The Criminal Responsibility of Nuon Chea, paras 842-846.
[2803] Section 15: The Criminal Responsibility of Nuon Chea, paras 842-846.

was no attempt to conduct the evacuation in an ordered or incremental fashion. Further, despite personally witnessing dead bodies in Phnom Penh,[2804] and being aware that Khmer Republic officials continued to be targeted, and even killed in subsequent years,[2805] NUON Chea did not subsequently seek to investigate or to punish Khmer Rouge soldiers for the killings committed during the transfer of the population of Phnom Penh. The Chamber considers that NUON Chea failed to take necessary and reasonable measures to prevent or punish the crimes committed during the course of movement of population (phase one). Consequently, the Chamber is satisfied that NUON Chea is responsible as a superior for crimes against humanity of murder, extermination, political persecution and the other inhumane acts of forced transfer and attacks against human dignity which were committed during movement of population (phase one).

15.4.2. *Crimes Committed During Movement of Population (Phase Two)*

15.4.2.1. *Planning*

899. The Chamber is satisfied that, over a series of meetings beginning in late 1975 and continuing throughout the relevant time period, NUON Chea, with others, planned the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity committed in the course of movement of population (phase two).

900. From 25 April 1975, at the latest, NUON Chea met with other senior leaders concerning policies to build and defend a self-reliant, independent and socialist country.[2806] The plan was to create a classless society in which all would be organised into cooperatives to rapidly build and defend the country, focusing in particular on rice production and irrigation projects.[2807] These plans originated in, and were based on, the Party's experience in the liberated Zones where, in order to supply the

[2804] Section 14: Joint Criminal Enterprise, para. 785; Section 15: The Criminal Responsibility of Nuon Chea, para. 849.
[2805] Section 14: Joint Criminal Enterprise, para. 817. Throughout 1976 to 1978 NUON Chea was copied to numerous telegrams from various Zone, Sector and District officials reporting that further "remnants" of the former regime, including officials, soldiers, police and their family members, had been identified, arrested and/or eliminated.
[2806] Section 14: Joint Criminal Enterprise, para. 740.
[2807] Section 14: Joint Criminal Enterprise, paras 742-743

manpower needed to accomplish these projects, a consistent pattern of urban evacuations and movements between rural areas had emerged prior to 17 April 1975 and continued thereafter.[2808] Despite this experience, there is no evidence that the plan included any measures providing for the health, well-being or consent of the people to be gathered into cooperatives. This plan therefore contemplated and involved the crimes committed in the course of phase two.

901. NUON Chea participated alongside other key leaders in the May 1975 meeting that discussed the leadership's plan to bring about socialist revolution by implementing collectivisation,[2809] effectively precluding any possibility that those removed from Phnom Penh would return to their homes and instead providing for further population movements.

902. In late 1975, NUON Chea, collectively with others, developed a specific economic plan. This plan acknowledged the shortages of food and medicine especially affecting the 'New People'. Nevertheless, the plan involved allocating labour strategically according to the Party's rice production target and infrastructure priorities, expanding the cooperatives, and rewarding the 'Old People' to the detriment of the suspect 'New People'. After the Standing Committee visited the Northwest Zone in August 1975 (a visit either attended by NUON Chea or of which he was at least aware by means of written reports), the Standing Committee decided to reallocate an additional 400,000 to 500,000 people to the region.[2810] The Party leadership also planned and ordered the movement of 20,000 to Preah Vihear (Sector 103) and others to Kampong Thom (Central (old North) Zone).[2811] In September 1975, the Central Committee, including NUON Chea as a full-rights member, endorsed the August 1975 decision.[2812] The Party leadership disseminated a document analysing progress in implementing the Party's agricultural policy in the previous four to five months and outlining a plan to move more than half a million people to other Zones in order to meet rice production requirements and acknowledged that shortages

[2808] Section 14: Joint Criminal Enterprise, paras 736, 791-794, 800-803.
[2809] Section 14: Joint Criminal Enterprise, para. 743.
[2810] Section 11: Movement of the Population (Phase Two), paras 585-587; Section 14: Joint Criminal Enterprise, para. 745.
[2811] Section 11: Movement of the Population (Phase Two), para. 586.
[2812] Section 14: Joint Criminal Enterprise, para. 749.

of medicine and food affected the 'New People' who were forcibly evacuated from Phnom Penh in particular.[2813] Despite the Party's extensive experience of the serious problems associated with forced urban evacuations and movements between rural areas, there is no evidence that the plan which emerged in late 1975 included any measures providing for the consent, health or well-being of those to be moved. Accordingly, the late 1975 plan to move people between rural areas contemplated and involved the crimes committed in the course of phase two.

903. The Chamber recalls that Party policy mandated that enemies, namely city-people or 'New People', as well as Khmer Republic officials,[2814] were to be re-educated or smashed.[2815] The Party, including NUON Chea, intended that this be implemented in part through population movements and the creation of collectives which enabled identification of those considered 'enemies.'[2816]

904. Accordingly, the Chamber is satisfied that the leadership, including NUON Chea, planned and designed policies which enabled 'enemies' to be identified and re-educated, or to disappear. The Chamber is further satisfied that the leadership, including NUON Chea, planned and designed the second phase of population transfer. After being made, these plans were disseminated through the Party ranks including in policy documents and issues of *Revolutionary Flag*.[2817] The Party Centre, in conjunction with Zone, Sector and District officials, controlled the means and modes of transportation.[2818] As provided for in the plans and consistent with a pattern of conduct, people were then transferred to work sites and areas reputedly with the most fertile land.[2819]Accordingly, in approving plans to move segments of the population around the country and knowing that CPK policy would be strictly implemented by lower-level cadre and Khmer Rouge forces, the Chamber is satisfied that NUON Chea was aware of the substantial likelihood that Khmer Rouge officials and soldiers would

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[2813] Section 14: Joint Criminal Enterprise, para. 748.
[2814] *See e.g.*, Section 3: Historical Background, paras 104-112, 120-127; Section 14: Joint Criminal Enterprise, paras 804-805.
[2815] Section 3: Historical Background, paras 117-118.
[2816] *See* Section 3: Historical Background, paras 111-112, 118.
[2817] *See e.g.*, Section 6: Communication Structure, paras 274-288; Section 11: Movement of the Population (Phase Two), para. 577.
[2818] Section 11: Movement of the Population (Phase Two), para. 578.
[2819] Section 11: Movement of the Population (Phase Two), paras 584-626; Section 14: Joint Criminal Enterprise, paras 800-803.

commit these crimes. Insofar as the crimes reflected the implementation of Party policy, the Party's plans contributed substantially to the commission of the crimes. The Chamber thus finds NUON Chea individually responsible for planning the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity committed in the course of movement of population (phase two).

15.4.2.2. *Ordering*

905. As discussed above, the leadership, including NUON Chea, decided upon population movements which occurred in September 1975-December 1977. It also designed policies which enabled 'enemies' to be identified and re-educated, or to disappear and continuously stressed the importance of the principle of secrecy. The Chamber has found above that NUON Chea played a key role in the formulation of decisions of the Party leadership and that these decisions were conveyed through the administrative and military hierarchy and then implemented by Khmer Rouge forces.[2820] That the lower-level cadres accepted the *de facto* authority and decisions of NUON Chea through the Party Centre and implemented Party policy both to move populations and identify enemies demonstrates that the decisions amounted to orders.

906. In ordering population movements to meet production needs and to facilitate the weeding out of enemies, the Chamber is satisfied that NUON Chea was aware of the substantial likelihood that the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity, would occur.

907. The Party's orders to transfer populations and identify enemies substantially contributed to the ongoing commission of the crimes. NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party,[2821] and used this *de jure* and *de facto* authority over lower-level Khmer Rouge cadres and soldiers to order Phase two of movement of population. The Chamber therefore finds it established that NUON Chea is individually criminal responsible for having ordered the crimes against humanity of extermination, political persecution and other

[2820] *See, e.g.*, Section 15: The Criminal Responsibility of Nuon Chea, paras 884-886, 899-904.
[2821] Section 7: Roles and Functions – Nuon Chea, para. 348.

inhumane acts of forced transfer, enforced disappearance and attacks against human dignity committed during the course of these transfers.

15.4.2.3. *Instigating*

908. As previously indicated, instigating requires that the Accused's conduct prompted the commission of the crimes meaning that his act or omission *substantially contributed* to the conduct of the perpetrator committing the crime. The Chamber has found that NUON Chea collectively with others planned movement of population (phase two) and that this plan substantially contributed to the commission of the crimes. The Chamber has also found that NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party, and used this *de jure* and *de facto* authority to instruct lower-level Khmer Rouge cadres and soldiers to commit crimes that occurred during movement of population (phase two). NUON Chea played a leading role in the indoctrination of Khmer Rouge cadres and soldiers particularly regarding training cadre on maintaining vigilance against enemies, and in the strict indoctrination of peasants on class struggle which included the identification of all 'New People' and former Khmer Republic officials as enemies.

As discussed above, the leadership, including NUON Chea designed policies which enabled 'enemies' to be identified and re-educated, or to disappear and continuously stressed the importance of the principle of secrecy. The Chamber is satisfied that NUON Chea's involvement, alongside other leaders, in formulating these policies preceded and substantially contributed to the crimes which were committed in the course of movement of population (phase two). Further, in view of NUON Chea's positions of authority at the time of the evacuation of Phnom Penh, the Chamber is satisfied his trainings, statements and involvement in issuing *Revolutionary Flag* were understood by lower-level Khmer Rouge cadres and soldiers as a direct incitement to commit crimes against those considered 'enemies.' Therefore the Chamber is satisfied that through his conduct, NUON Chea prompted the perpetrators to commit the crimes during movement of population (phase two).

909. Finally, adopting the reasoning outlined above with respect to "planning",[2822]

[2822] *See* Section 15: The Criminal Responsibility of Nuon Chea, paras 902-904.

the Chamber is satisfied that in designing and ordering population movements, NUON Chea intended, or at a minimum was aware of the substantial likelihood, that crimes would be committed in execution of the Party's instructions. The Chamber is therefore satisfied that NUON Chea is criminally responsible for instigating the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks on human dignity during the course of movement of population (phase two).

15.4.2.4. *Aiding and abetting*

910. The Chamber is satisfied that NUON Chea provided encouragement and moral support to the perpetrators of the crimes committed during movement of population (phase two). In propaganda materials and indoctrination sessions, NUON Chea disseminated, endorsed, praised and encouraged the Party's economic policies providing for the strategic allocation of labour and class struggle.[2823]

911. This conduct had a substantial effect on the commission of the crimes. The Chamber is satisfied that it encouraged lower-level Khmer Rouge officials and soldiers to act zealously in implementing the Party's policies.

912. The Chamber is also satisfied that NUON Chea was aware that his actions and support of the Party's policies to transfer populations and identify class enemies legitimated and fortified the resolve of Khmer Rouge soldiers and officials to commit the crimes. Through his support for the common purpose and the policies of population movements and targeting of Khmer Republic officials, the Chamber is also satisfied that NUON Chea was aware of the essential elements of the crimes. Accordingly, the Chamber finds NUON Chea criminally responsible for aiding and abetting the direct perpetrators to commit the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity during movement of population (phase two).

[2823] *See e.g.*, Section 7: Roles and Functions – Nuon Chea, paras 325-326; Section 14: Joint Criminal Enterprise, paras 738, 818.

15.4.2.5. *Superior Responsibility*

15.4.2.5.1. *Superior-Subordinate relationship*

913. It has been established that NUON Chea maintained a superior-subordinate relationship and exercised effective control over Khmer Rouge armed forces during the time period relevant to Case 002/01.[2824] In view of his senior position as the Party Deputy Secretary and in light of the strict, hierarchical administrative structure put in place by the CPK Statute, NUON Chea had *de jure* authority over those in the established line of command. Additionally, having regard to the strict reporting line through which the lower echelons briefed senior leaders on key matters and requested guidance, the Chamber is satisfied NUON Chea also exercised *de facto* authority over all Khmer Rouge cadres.

914. The Chamber will now assess NUON Chea's authority over the newly restructured RAK. In July 1975, with the incorporation of Khmer Rouge forces into the RAK, a number of Zone military brigades were brought under the control of the Central Committee; specifically, under the command of the General Staff, headed by SON Sen.[2825] When SON Sen received information on matters of military affairs and national defence, he in turn briefed the Standing Committee. He also forwarded written messages and reports received from military commanders to other CPK leaders, including NUON Chea, with handwritten annotations and requests for instructions.[2826] The CPK Statute adopted in January 1976 at the Fourth Congress provided that the RAK was wholly subordinate and subjected to "the absolute leadership monopoly of the Communist Party of Kampuchea".[2827] As several surviving telegrams from 1977-78 evidence, Zones not only reported on battlefield situations and fighting on the border with Vietnam to 'Angkar' or the leadership, copying NUON Chea, but also asked for instructions.[2828] The Chamber is thus also satisfied that the CPK, including NUON Chea, maintained a superior-subordinate relationship and continued to exercise effective control over the newly restructured

[2824] Section 15: The Criminal Responsibility of Nuon Chea, paras 893-896.
[2825] Section 5: Administrative Structures, para. 240.
[2826] Section 6: Communication Structure, para. 295.
[2827] Section 5: Administrative Structures, para. 241.
[2828] Section 7: Roles and Functions – Nuon Chea, para. 337; Section 14: Joint Criminal Enterprise, para. 817.

Khmer Rouge forces known as the RAK after July 1975.

15.4.2.5.2. *Knew or had reason to know*

915. As outlined above,[2829] the Chamber is satisfied that NUON Chea, through his senior leadership roles, knew or had reason to know that Khmer Rouge forces would commit the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity during the course of movement of population (phase two). Further, his knowledge that crimes were committed during the first phase of population transfer put NUON Chea on notice that crimes would be committed in subsequent population transfers.

15.4.2.5.3. *Failure to prevent or punish*

916. Despite this knowledge, NUON Chea failed to take any reasonable measures to prevent further crimes at the hands of Khmer Rouge soldiers and officials during subsequent population movements. NUON Chea did not subsequently seek to investigate or to punish the perpetrators of these crimes.

917. Consequently, the Chamber is satisfied that NUON Chea is responsible as a superior for the crimes against humanity of extermination, political persecution and other inhumane acts of forced transfer, enforced disappearance and attacks against human dignity committed by Khmer Rouge soldiers and officials during population movements effected from late 1975.

15.4.3. ***Crimes Committed at Tuol Po Chrey***

15.4.3.1. *Planning*

918. Throughout the democratic revolution, Khmer Republic officials were targeted for arrest, execution and disappearance after they surrendered or were rendered *hors de combat*.[2830] This policy was endorsed by Party leaders. Indeed, by June 1974, it was closely linked to the population movement policy: moving people to the

[2829] Section 15: The Criminal Responsibility of Nuon Chea, paras 842-846. *See also,* Section 15: The Criminal Responsibility of Nuon Chea, para. 897.
[2830] Section 3: Historical Background, paras 120-127.

cooperatives facilitated the identification and elimination of government agents, spies and pacifist agents.[2831] During a meeting in June 1974, the Central Committee, including NUON Chea, decided upon a plan for the final offensive to liberate the country.[2832] Prior experiences, in particular at Oudong where Khmer Republic officials were executed en masse, were discussed at this meeting and formed the basis for the plan which resulted. The Chamber is therefore satisfied that the plan contemplated and involved the arrest, execution and disappearance of Khmer Republic officials in conjunction with the forced transfer of the population of urban areas.[2833] During a meeting of senior leaders in early April 1975, which NUON Chea attended and participated in, the plan for the final offensive was affirmed.[2834]

919. The Chamber has already found that senior leaders, such as NUON Chea and KHIEU Samphan, knew of the substantial likelihood that crimes would result on a large scale from policies grounded in the principle of secrecy; strict indoctrination of uneducated peasants on class struggle, including the identification of all 'New People' and former Khmer Republic officials as enemies; and the objective of pursuing national independence at all costs.[2835] The plans reached in relation to the targeting of Khmer Republic officials were undertaken pursuant to and in furtherance of these policies.[2836] The Chamber finds that, as a general matter, the plans necessarily involved and contemplated that crimes would be committed on a large scale, including at Tuol Po Chrey.

920. This plan preceded and substantially contributed to the crimes perpetrated at Tuol Po Chrey. The plan was disseminated through the chain of command by those present at the June 1974 and April 1975 meetings.[2837] In the days following the liberation of Pursat, which the Chamber has found occurred not long after the liberation of Phnom Penh on 17 April 1975, the Northwest Zone Committee, chaired by Secretary ROS Nhim, ordered the assembly and execution of Khmer Republic

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[2831] Section 3: Historical Background, para. 118.
[2832] Section 3: Historical Background, paras 130-138; Section 15: The Criminal Responsibility of Nuon Chea, paras 878-879.
[2833] Section 15: The Criminal Responsibility of Nuon Chea, paras 878-897.
[2834] Section 3: Historical Background, paras 144-145; The Criminal Responsibility of Nuon Chea, paras 880-882.
[2835] Section 15: The Criminal Responsibility of Nuon Chea, paras 842-846.
[2836] Section 14: Joint Criminal Enterprise, paras 835-837.
[2837] Section 3: Historical Background, paras 133, 141, 148.

officials in Pursat.[2838] This order was consistent with the plan for the final offensive and with a pattern of conduct which began before 17 April 1975 and continued thereafter.[2839] The Chamber is therefore satisfied that this order was made pursuant to the plan reached at the June 1974 meeting and affirmed at the April 1975 meeting. Following the order, Khmer Rouge cadres, acting under the authority of the Northwest Zone Committee and Secretary ROS Nhim, began assembling Khmer Republic officials approximately on 24 April 1975, and later around 25 or 26 April 1975, transferred them to Tuol Po Chrey where they were executed.[2840]

921. The Chamber has already found that NUON Chea knew of the substantial likelihood that crimes, including those committed at Tuol Po Chrey, would be committed.[2841] The Chamber is therefore satisfied that in planning the final offensive to liberate the country, NUON Chea intended or was aware of a substantial likelihood of the commission of these crimes upon the execution of the plan.

922. The Chamber therefore finds that NUON Chea is criminally responsible for planning the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

15.4.3.2. *Ordering*

923. As discussed above,[2842] NUON Chea had *de facto* and *de jure* authority over lower-level Khmer Rouge. The Chamber is satisfied that NUON Chea used this authority to order the crimes committed at Tuol Po Chrey. During the meeting in June 1974, the Central Committee, including NUON Chea, decided upon a plan for the final offensive to liberate the country, which, as outlined above, contemplated and involved the arrest, execution and disappearance of Khmer Republic officials in conjunction with the forced transfer of the population of urban areas.[2843] After this meeting, meeting attendees were instructed to disseminate information about the conclusions reached to their respective Zones of competence.[2844] After the further

[2838] Section 12: Tuol Po Chrey, paras 663-666.
[2839] Section 14: Joint Criminal Enterprise, paras 830-834.
[2840] Section 12: Tuol Po Chrey, paras 667-681.
[2841] Section 15: The Criminal Responsibility of Nuon Chea, para. 846.
[2842] Section 15: The Criminal Responsibility of Nuon Chea, paras 884-886.
[2843] Section 15: The Criminal Responsibility of Nuon Chea, paras 878-883, 918-922.
[2844] Section 3: Historical Background, para. 141.

meeting of senior leaders in early April 1975, which NUON Chea attended and participated in, and at which the plan for the final offensive was affirmed,[2845] orders were again conveyed to military commanders for implementation.[2846] As part of the dissemination of orders through the ranks, in April 1975, the Northwest Zone Committee, chaired by Secretary ROS Nhim, ordered the assembly and execution of Khmer Republic officials in Pursat. Following this order, Khmer Rouge cadres, acting under the authority of the Northwest Zone Committee and Secretary ROS Nhim, began assembling Khmer Republic officials approximately on 24 April 1975, and later around 25 or 26 April 1975, transferring them to Tuol Po Chrey where they were executed.[2847]

924. NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party,[2848] and used this *de jure* and *de facto* authority over lower-level Khmer Rouge to order the crimes at Tuol Po Chrey. The Chamber is satisfied that the decisions and instructions of the leadership amounted to orders which were implemented,[2849] and that the lower-level cadres accepted the authority and decisions of the CPK Party. These orders preceded and substantially contributed to the commission of the crimes.

925. Adopting the reasoning outlined above in relation to "planning",[2850] the Chamber is satisfied that in ordering the final offensive, NUON Chea intended, or at a minimum was aware of the substantial likelihood that crimes would be committed in execution of the Party's instructions. The Chamber is therefore satisfied that NUON Chea is criminally responsible for ordering the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

[2845] Section 3: Historical Background, paras 144-146; Section 15: The Criminal Responsibility of Nuon Chea, para. 880.
[2846] Section 3: Historical Background, paras 144-151.
[2847] Section 12: Tuol Po Chrey, paras 667-681.
[2848] Section 7: Roles and Functions – Nuon Chea, para. 348.
[2849] It is clear that the CPK leadership considered the same. *See Revolutionary Flag*, E3/193, August 1977, p. 2, ERN (En) 00399222, (Kh) 00062948, (Fr) 00611826 (on 25 July 1977 at the West Zone Cadre Conference, a representative of the Party Centre gave a "presentation regarding the instructions of the Party on a number of important matters" that must be implemented in the second semester of 1977).
[2850] Section 15: The Criminal Responsibility of Nuon Chea, paras 918-922.

15.4.3.3. *Instigating*

926. The Chamber has found that NUON Chea collectively planned the forced transfer of the inhabitants of cities, that he contributed to the adoption and dissemination of policies aimed at putting into place specific measures against former Khmer Republic officials and that this plan substantially contributed to the commission of the crimes. The Chamber has also found that NUON Chea, together with POL Pot, exercised the ultimate decision-making power of the Party, and used this *de jure* and *de facto* authority to instruct lower-level Khmer Rouge cadres and soldiers to commit crimes that occurred at Tuol Po Chrey. NUON Chea played a leading role in the indoctrination of Khmer Rouge cadres and soldiers particularly regarding training cadre on maintaining vigilance against enemies, and in the strict indoctrination of peasants on class struggle which included the identification of all 'New People' and former Khmer Republic officials as enemies. As discussed above, the leadership, including NUON Chea designed policies which enabled 'enemies' to be identified and re-educated, or to disappear and continuously stressed the importance of the principle of secrecy. The Chamber is satisfied that NUON Chea's involvement, alongside other leaders, in formulating these policies preceded and substantially contributed to the crimes which were committed at Tuol Po Chrey. Further, in view of NUON Chea's positions of authority at the time of the evacuation of Phnom Penh, the Chamber is satisfied his trainings, statements and involvement in issuing *Revolutionary Flag* were understood by lower-level Khmer Rouge cadres and soldiers as a direct incitement to commit crimes against those considered enemies. Therefore the Chamber is satisfied that through his conduct, NUON Chea prompted the crimes committed at Tuol Po Chrey as through his personal involvement he substantially contributed to the conduct of the perpetrator committing the crimes. As discussed above, the leadership, including NUON Chea, designed and ordered the final offensive to liberate the country which, as outlined above, contemplated and involved the arrest, execution and disappearance of Khmer Republic officials in conjunction with the evacuation of urban areas.[2851] The Chamber is satisfied that through his role in formulating decisions of the Party leadership, which were conveyed through the administrative and military hierarchy and then implemented by

[2851] Section 15: The Criminal Responsibility of Nuon Chea, paras 878-883, 918-922.

Khmer Rouge forces, NUON Chea prompted or induced the crimes committed at Tuol Po Chrey.

927. Adopting the reasoning outlined above in relation to "planning",[2852] the Chamber is satisfied that in ordering the final offensive, NUON Chea intended, or at a minimum was aware of the substantial likelihood that crimes would be committed in execution of the Party's instructions. The Chamber is therefore satisfied that NUON Chea is criminally responsible for instigating the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

15.4.3.4. *Aiding and abetting*

928. The Trial Chamber is satisfied that NUON Chea provided encouragement and moral support to the perpetrators of the crimes committed at Tuol Po Chrey. This encouragement and moral support manifested itself through his participation in the decision concerning the final offensive to liberate the country, which, as outlined above, contemplated and involved the arrest, execution and disappearance of Khmer Republic officials in conjunction with the evacuation of urban areas. He further provided encouragement and moral support to the perpetrators via his role, before and after the crimes, in propaganda materials and training sessions, advocating the identification and elimination of Khmer Republic officials.[2853]

929. NUON Chea's encouragement and moral support had a substantial effect on the commission of crimes at Tuol Po Chrey. NUON Chea's words and actions in disseminating, and advocating implementation of, the policies encouraged the perpetrators to commit the crimes. Further, the CPK's approval of the policies had a legitimising effect which facilitated the realisation of the crimes. Recalling that pre-17 April 1975 conduct relating to the elimination of Khmer Republic officials must be considered in the context of the armed conflict, the Chamber notes that, although these propaganda materials did not differentiate between combatants and other Khmer Republic officials, the Chamber is satisfied that it encouraged soldiers engaged in hostilities, as well as those criminally targeting Khmer Republic officials.

[2852] Section 15: The Criminal Responsibility of Nuon Chea, paras 918-922.
[2853] *See e.g.*, Section 15: The Criminal Responsibility of Nuon Chea, paras 889, 928.

930. In relation to his conduct after the fact, the Chamber notes that the policy to target Khmer Republic officials was pre-existing, as was NUON Chea's role in training and propaganda. The Chamber is therefore satisfied that the perpetrators anticipated and contemplated that NUON Chea would continue to justify, encourage and look to win further support for the revolution through his propaganda and indoctrination efforts. It thereby encouraged the perpetrators, facilitating and having a substantial effect on the commission of the crimes.

931. The Chamber has already found that NUON Chea not only knew that the crimes committed during phase one would likely be committed, but that he that intended them. He also knew of the consistent pattern of executions before, during and after the crimes at Tuol Po Chrey. With this knowledge and intent, NUON Chea provided encouragement and moral support to the perpetrators of crimes committed at Tuol Po Chrey. Accordingly, the Chamber finds that NUON Chea is responsible for aiding and abetting the direct perpetrators to commit the crimes against humanity of murder, extermination and political persecution at Tuol Po Chrey

15.4.3.5. *Superior Responsibility*

932. The Chamber has found it established that Khmer Rouge soldiers and officials under the authority of the Northwest Zone committed murder, extermination and political persecution through execution as crimes against humanity at Tuol Po Chrey.

15.4.3.5.1. *Superior-Subordinate relationship*

933. It has been established that NUON Chea held a superior-subordinate relationship and exercised effective control over Khmer Rouge forces and Zone secretaries at the time of the capture of Phnom Penh.[2854] The Chamber is satisfied the analysis applies equally to the events at Tuol Po Chrey which unfolded in the Northwest Zone under the authority of its Secretary, MUOL Sambath *alias* ROS Nhim, in the days following the capture of Phnom Penh. The Chamber notes that NUON Chea and ROS Nhim had an ongoing working relationship from long before 17 April 1975. ROS Nhim was a member of the Central Committee, and he attended the Second and Third Party Congress with NUON Chea and other CPK leaders in

[2854] Section 15: The Criminal Responsibility of Nuon Chea, paras 893-896.

1963 and 1971 respectively.[2855] NUON Chea visited ROS Nhim in Samlaut on many occasions[2856] and ROS Nhim was present at the June 1974 meeting at which the CPK leaders, including NUON Chea, decided to empty all the cities, including Phnom Penh, once the country was liberated.[2857]

934. After 17 April 1975, ROS Nhim and other Zone secretaries attended regular meetings, *inter alia* with, NUON Chea, to discuss the implementation of CPK policies,[2858] including the May 1975 meeting at the Silver Pagoda.[2859] Thereafter, throughout the course of the DK period, NUON Chea travelled to Battambang every three to four months to meet ROS Nhim,[2860] who held an honorary position as second deputy chairman of the State Presidium, showing the level of confidence the Party Centre afforded him.[2861] ROS Nhim also came to Phnom Penh on a "regular basis" to meet with Party leaders, including NUON Chea.[2862] Surviving telegrams before the Chamber from ROS Nhim to the CPK leadership from the DK period also regularly reported on internal enemies,[2863] and requested advice or guidance.[2864] Although these telegrams date from well after the events at Tuol Po Chrey, in the Chamber's view they demonstrate that NUON Chea exercised *de facto* authority over ROS Nhim. The Chamber is thus satisfied that a superior-subordinate relationship existed between ROS Nhim, in his capacity as Northwest Zone Secretary, and the members of the Party Centre, including NUON Chea, which dating from before 17 April 1975.

15.4.3.5.2. *Knew or had reason to know*

935. The NUON Chea Defence submitted that there is no evidence that NUON Chea was informed of the events at Tuol Po Chrey,[2865] yet later acknowledged that NUON Chea "recalled receiving unconfirmed reports that executions may have taken

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[2855] Section 3: Historical Background, paras 89, 95; Section 14: Joint Criminal Enterprise, paras 727, 733.
[2856] Section 5: Administrative Structures, para. 309.
[2857] Section 3: Historical Background, para. 133; Section 7: Roles and Functions – Nuon Chea, para. 335, fn. 1019; Section 14: Joint Criminal Enterprise, para. 735.
[2858] Section 14: Joint Criminal Enterprise, para. 740.
[2859] Section 14: Joint Criminal Enterprise, para. 743.
[2860] Section 11: Movement of the Population (Phase Two), para. 773; *see also*, T. 18 April 2012 (SAUT Toeung), pp. 69, 74.
[2861] Section 5: Administrative Structures, para. 219.
[2862] Section 14: Joint Criminal Enterprise, para. 772.
[2863] Section 14: Joint Criminal Enterprise, para. 773.
[2864] Section 14: Joint Criminal Enterprise, para. 773.
[2865] NUON Chea Closing Brief, E295/6/3, 26 September 2013, paras 444, 447-451.

place".[2866] Even were the Chamber to accept that NUON Chea had no express knowledge of events at Tuol Po Chrey, an Accused is not required to have knowledge of the specific crimes of their subordinates in order for the former's responsibility as a superior to be activated. An Accused's responsibility is triggered where he or she knew or had reason to know, that his subordinates had engaged in, were engaging in, or were about to engage in criminal conduct.[2867]

936. The Chamber has found that NUON Chea, through his senior leadership roles, knew from past experience that Khmer Rouge forces involved in liberating other cities in the years before April 1975 had committed mass killings of Khmer Republic officials precisely because they were labelled as the enemy.[2868] In view of his role in developing the Targeting Policy,[2869] the Chamber is satisfied NUON Chea knew and intended that the same mass killings of, among others, Khmer Republic officials, would repeat itself as other cities were evacuated after the capture of Phnom Penh.

937. In view of the prior occurrence of mass executions of Khmer Republic officials, the Chamber is also satisfied NUON Chea was aware that his subordinates possessed discriminatory intent and knew that their acts would constitute political persecution.

15.4.3.5.3. *Failure to prevent or punish*

938. In an interview, NUON Chea claimed that had he known of the killings at Tuol Po Chrey he would have taken measures to stop them.[2870] In the Chamber's view, his role in developing the Targeting Policy establishes otherwise. Further, despite evidence of killings and persecution of Khmer Republic officials during the prior evacuation of cities, including Phnom Penh, NUON Chea failed to take any reasonable measures to prevent further persecution. As the Co-Prosecutors have failed to establish to the required standard of proof that the particular events at Tuol Po

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[2866] NUON Chea Closing Brief, E295/6/3, 26 September 2013, para. 452. The Chamber will not rely on this for the purpose of its current analysis as it is not clear to which events this relates.
[2867] Section 13: Applicable Law: Individual Criminal Responsibility, para. 715.
[2868] Section 15: The Criminal Responsibility of Nuon Chea, paras 822, 918.
[2869] *See* Section 14: Joint Criminal Enterprise, paras 835-836.
[2870] NUON Chea Closing Brief, E295/6/3, 26 September 2013, para. 448 *citing* Enemies of the People, E3/4001R, Additional Footage: One Day at Po Chrey ("had I known then, we would have taken preventive measures to stop that kind of killing").

Chrey subsequently came to NUON Chea's attention, the Chamber will not consider whether NUON Chea also failed to punish his subordinates after the events. In any event, while the NUON Chea Defence submits there is evidence that some measures were taken to stop executions of former government officials, in particular in Phnom Penh from May to October 1975,[2871] the evidence is vague and fails to clearly identify who was responsible for those measures. As such, this evidence fails to clarify the extent of NUON Chea's role, if any.

939. Consequently, for failing to prevent the crimes at Tuol Po Chrey, the Chamber is satisfied that NUON Chea is responsible as a superior for the crimes against humanity of murder, extermination and political persecution committed by Khmer Rouge soldiers and officials of the Northwest Zone at Tuol Po Chrey.

15.5. Conclusion

940. The Chamber has found that NUON Chea, through a JCE, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey. The Chamber has also found that the Accused planned, ordered, instigated and aided and abetted the aforementioned crimes during movement of populations (phases one and two) and at Tuol Po Chrey. Considering that the Accused's participation in the JCE encompasses all the conduct forming the basis of the Chamber's findings on these other forms of responsibility, the Chamber will enter a conviction only for commission of these crimes through a JCE.

941. Further, the Chamber has found that NUON Chea is both directly responsible and responsible as a superior for all crimes committed in the course of movement of population (phases one and two) and at Tuol Po Chrey. Having found that the Accused was directly responsible for these crimes through his participation in the

[2871] NUON Chea Closing Brief, E295/6/3, 26 September 2013, paras 452-454, *citing* Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge 1975-1979*, E3/1593, ERN (En) 00678541.

JCE, the Chamber declines to enter a conviction under the doctrine of superior responsibility. It will instead consider the Accused's superior position in sentencing.

942. The Chamber also finds that NUON Chea planned, ordered, instigated and aided and abetted the crimes of extermination (during movement of population phases one and two), and other inhumane acts (comprising enforced disappearances) (during movement of population phase two). Finally, the Chamber finds that NUON Chea planned, ordered, instigated, aided and abetted political persecution (at Tuol Po Chrey).

16. THE CRIMINAL RESPONSIBILITY OF KHIEU SAMPHAN

943. According to the Closing Order as limited in Case 002/01, KHIEU Samphan, through a JCE, committed the following crimes against humanity:

> Movement of population (phase one): murder, political persecution, and other inhumane acts (comprising forced transfer and attacks against human dignity);
>
> Movement of population (phase two): political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity); and
>
> Tuol Po Chrey: murder and extermination through executions of Khmer Republic officials.[2872]

The Closing Order alleges that KHIEU Samphan intentionally participated in, or contributed to, the design and implementation of the common purpose which resulted in and/or involved the commission of crimes both before and during the DK era. By virtue of his positions during the DK era, including his membership of the Central Committee and Office 870, the Closing Order alleges that KHIEU Samphan attended and contributed to meetings, including Standing Committee meetings, where policy was discussed and disseminated. He also made public statements, performed diplomatic functions and participated in indoctrination sessions, thereby endorsing and disseminating the common purpose internationally and domestically.[2873] On this basis, the Closing Order further alleges that the Accused planned, ordered, instigated, aided, abetted or, alternatively, is responsible as a superior for all crimes against humanity falling within the scope of Case 002/01.[2874]

16.1. Knowledge Relevant to the Modes of Liability

944. KHIEU Samphan's knowledge of the policies, patterns of conduct and specific crimes falling within the scope of Case 002/01 is relevant to the Chamber's assessment of the chapeau requirements for crimes against humanity and all forms of responsibility, and will therefore be addressed first. The requisite level of knowledge varies depending on whether the criminal liability of the Accused materialises before,

[2872] Closing Order, paras 1525, 1540; *see also*, Section 14: Joint Criminal Enterprise, paras 811-813.
[2873] Closing Order, paras 1536-1537.
[2874] Closing Order, paras 1545, 1548, 1551, 1554, 1559.

concurrent with or after the commission of the crimes.[2875] Therefore, in this section, the Chamber will examine whether, prior to the commission of the crimes falling within the scope of Case 002/01, the Accused was aware of the substantial likelihood of their later occurrence (Section 16.1.1), and whether the Accused had knowledge of the crimes concurrent with (Section 16.1.2) or after their commission (Section 16.1.3).

945. By his speeches and through training sessions, KHIEU Samphan personally participated in the indoctrination of people on class struggle and the need to ensure the independence of the country. By these actions, he also contributed to the identification of feudalists and capitalists as enemies and generally of all the 'New People' as people who needed to be tempered. KHIEU Samphan knew that such indoctrination to hate would inevitably lead to violence. He also agreed with the view that the revolution should rely on the peasants of the lowest classes in order to impose on Cambodia the dictatorship of the proletariat. Those belonging to this new ruling class had very little formal education, but were strictly disciplined, indoctrinated, taught to deceive people and behave in accordance with the principle of secrecy. KHIEU Samphan could not ignore that giving extensive power to such people would lead to unquestioning implementation of the party line without the exercise of proper judgment. For this reason, the only reasonable expectation was that vast numbers of people would die during forced population movements because of the conditions of transport, and that such movements would involve the commission of many crimes against humanity. Furthermore, in order to exclude witnesses and avoid international criticism, KHIEU Samphan constantly supported the principle of secrecy and contributed to the decision to evacuate all foreigners still present in Phnom Penh. Indeed, he played a key role in preserving the secrecy fostered by the regime, continuously denying and hiding the reality of the situation experienced by the Cambodian people. KHIEU Samphan knew that, in doing so, he protected perpetrators and allowed the commission of further crimes.

946. KHIEU Samphan made various admissions concerning his general knowledge of the policies and crimes being committed by the Khmer Rouge. He knew that violent acts of a criminal nature were being perpetrated against the civilian population

[2875] Section 13: Applicable Law: Individual Criminal Responsibility, paras 694, 698, 700, 702, 704, 715.

in implementing CPK policies.[2876] He believed however, that human rights were a concern secondary to the pressing issue of the independence of Cambodia. The well-being of the people and the need to seek their consent to sacrifice and suffer for the policies of the Khmer Rouge could wait.[2877] Indeed, KHIEU Samphan was convinced that coercion was necessary to collectivise society. He knew that the goal of collectivisation was achieved under duress and he endorsed this aspect of the policy.[2878] He expected that people would die during population movements[2879] and was aware of the Party's fear that, unless eliminated, Khmer Republic officials might stage a counter-revolution following liberation.[2880] As set out below, in public statements during the democratic and socialist revolutions, KHIEU Samphan further demonstrated his knowledge of the policies and crimes.[2881] Moreover, throughout the time period relevant to Case 002/01, KHIEU Samphan had wide-ranging access to information concerning the crimes.

16.1.1. *Awareness of the Substantial Likelihood of the Commission of the Crimes*

947. In a process initiated in May 1972 and officially confirmed one year later, the Central Committee decided to close markets in the liberated zones and to establish cooperatives, pooling labour resources for rice production with the purpose of "[attacking] the power of the classes of feudalists, land owners, and capitalists."[2882] In 1972, IENG Sary gave a public interview concerning collectivisation in the liberated zones.[2883] CPK circulars assigned people to collective agricultural production.[2884] Further, conditions of transport, the health or the well-being of the people were of no concern. In the July 1973 issue of *Revolutionary Flag*, the Party leadership, while noting shortages in the liberated zones, declared its commitment to continue forced

[2876] Section 14: Joint Criminal Enterprise, para. 724.
[2877] Section 14: Joint Criminal Enterprise, para. 785.
[2878] Section 14: Joint Criminal Enterprise, para. 738; Section 8: Roles and Functions – Khieu Samphan, para. 354.
[2879] Section 14: Joint Criminal Enterprise, para. 785; Section 10: Movement of the Population (Phase One), para. 556-558.
[2880] Section 14: Joint Criminal Enterprise, para. 815.
[2881] Section 14: Joint Criminal Enterprise, para. 724.
[2882] Section 3: Historical Background, paras 113, 115.
[2883] Section 14: Joint Criminal Enterprise, para. 734.
[2884] Section 3: Historical Background, para. 113.

transfer of population, leaving it to the people to resolve their own problems.[2885] Pursuant to this population movement policy, consistent patterns of forced urban evacuations and movements between rural areas emerged in the liberated zones, accompanied by ill-treatment, discrimination against people taken from enemy territory and against Khmer Republic officials, and deaths resulting from acts of terror, the conditions of transfer and the use of force.[2886]

948. Drawing on this prior experience, in June 1974 and then again in April 1975, senior leaders, including KHIEU Samphan, collectively planned to forcibly transfer the population of urban areas. This plan contemplated and/or involved the crimes against humanity of murder, extermination, political persecution, and other inhumane acts (comprising forced transfers and attacks against human dignity).[2887] Further, based on prior experience, in particular at Oudong, the June 1974 plan to evacuate all the cities once the country was liberated also contemplated and/or involved the targeting of Khmer Republic officials for execution, arrest or disappearance following the liberation of an area.[2888] Following June 1974, the pattern of emptying urban areas of their inhabitants and targeting Khmer Republic officials intensified.[2889]

949. At the time these policies were decided upon, patterns of conduct emerged, CPK circulars issued, and public statements on these topics made by members of the Party Centre, KHIEU Samphan lived and worked in close proximity with other senior leaders, producing FUNK propaganda, traveling throughout the liberated zones and carrying out diplomatic functions, including visiting Beijing in order to liaise with NORODOM Sihanouk.[2890] The Chamber is therefore satisfied that KHIEU Samphan knew of these CPK policies and of the resulting patterns of conduct adopted in order to implement them.

[2885] Section 3: Historical Background, para. 104.
[2886] Section 14: Joint Criminal Enterprise, paras 791-794, 800-803.
[2887] Section 3: Historical Background, paras 132-147; Section 10: Movement of the Population (Phase One), para. 547; Section 14: Joint Criminal Enterprise, paras 735, 751, 788; Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003.
[2888] Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003, 1039-1043. *See also*, Section 3: Historical Background, paras 120-127.
[2889] Section 3: Historical Background, paras 133-134, 143-147; Section 12: Tuol Po Chrey, paras, 678-681.
[2890] Section 8: Roles and Functions – Khieu Samphan, paras 366-368. *See also*, Section 14: Joint Criminal Enterprise, paras 731, 962.

950. The Chamber also notes that various foreign states circulated reports of the execution of Khmer Republic officials and other enemies in the liberated zones before 17 April 1975.[2891] On the basis of his diplomatic roles, KHIEU Samphan was himself in contact with foreign diplomats who would have had access to this information. Moreover, foreign diplomats were also in contact with NORODOM Sihanouk and other external FUNK/GRUNK officials.[2892] As liaison with NORODOM Sihanouk and other FUNK/GRUNK officials, the Chamber is satisfied that KHIEU Samphan was notified of at least some of these reports.

951. For all these reasons, the Chamber finds that KHIEU Samphan knew of the policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials before 17 April 1975, and the accompanying patterns of conduct which had emerged. He therefore knew of the substantial likelihood that further implementation of these policies would, consistent with the ongoing patterns of conduct, result in the crimes committed in the course of phases one and two and at Tuol Po Chrey.

952. Finally, specific to his awareness in relation to movement of population (phase two), the Chamber also finds that KHIEU Samphan knew that living conditions throughout the country were dire after 17 April 1975, characterised by food shortages and disease.[2893] In April 1975, late 1975 and late 1976, Party leaders, including KHIEU Samphan, nevertheless planned forced population movements during phase two without providing for the consent, the health or the well-being of those to be transferred. These plans therefore inevitably contemplated and involved the crimes that would later be committed.[2894] These plans were disseminated in instructional meetings, policy documents and *Revolutionary Flag* and *Revolutionary Youth* magazines before and during phase two.[2895] *Revolutionary Flag* and *Revolutionary Youth* magazines were delivered to all DK Ministries and offices of the Party

[2891] Section 14: Joint Criminal Enterprise, para. 827.
[2892] Section 8: Roles and Functions – Khieu Samphan, para. 368.
[2893] Section 14: Joint Criminal Enterprise, para. 748.
[2894] Section 11: Movement of the Population (Phase Two), paras 576, 604-606; Section 16: The Criminal Responsibility of Khieu Samphan, paras 1023-1029.
[2895] Section 6: Communication Structure, para. 265; Section 10: Movement of the Population (Phase One), paras 544-545; Section 11: Movement of the Population (Phase Two), paras 577, 610.

Centre.[2896] Considering his participation in planning the crimes during phase two, his attendance at instructional meetings and his access to *Revolutionary Flag* and *Revolutionary Youth* magazines, the Chamber is satisfied that KHIEU Samphan also knew of the substantial likelihood that these plans and policies to move people between rural areas would, consistent with an ongoing pattern of conduct, result in the commission of the crimes during phase two.

16.1.2. ***Knowledge Concurrent with the Commission of the Crimes***

16.1.2.1. *Movement of Population (Phase One)*

953. Beginning on 17 April 1975 and for the next week while the evacuation of Phnom Penh was ongoing, the military leaders whose troops were carrying out the crimes committed during phase one sought and received instructions from senior leaders at B-5, where KHIEU Samphan was based.[2897] Meanwhile, the forced transfers, accompanying ill-treatment and deaths, arrests of Khmer Republic officials, and claimed justifications were reported by news agencies and various states.[2898] Some diplomatic reports concerning the evacuation were relayed to NORODOM Sihanouk and PENN Nouth, who were in contact with the leaders of the internal resistance, in particular KHIEU Samphan as their designated liaison.[2899] The Chamber is also satisfied that external GRUNK officials, including officials of the internal resistance travelling abroad during the time when Phnom Penh was emptied of its inhabitants or based in Hanoi, such as IENG Sary and IENG Thirith, would have had access to some of these diplomatic and public news reports. These officials were in contact with the internal resistance via radio and telegram throughout the democratic revolution[2900] and the Chamber is satisfied that this contact continued following the liberation of Phnom Penh. The Chamber is therefore satisfied KHIEU Samphan had knowledge of the crimes concurrent with their commission in phase one.

[2896] Section 6: Communication Structure, para. 263.
[2897] Section 8: Roles and Functions – Khieu Samphan, para. 371; Section 14: Joint Criminal Enterprise, para. 739.
[2898] *See e.g.* Section 6: Communication Structure, paras 267-268; Section 10: Movement of the Population (Phase One), para. 503.
[2899] Section 8: Roles and Functions – Khieu Samphan, para. 365; Section 14: Joint Criminal Enterprise, paras 789, 821.
[2900] Section 6: Communication Structure: paras 254-256, 251; Section 8: Roles and Functions - KHIEU Samphan, paras 367, 372.

16.1.2.2. *Executions at Tuol Po Chrey*

954. On and after 17 April 1975, further towns throughout Cambodia were liberated, and were accompanied by the arrest, execution, disappearance and other ill-treatment of Khmer Republic officials immediately before, during or immediately after the transfer of all city dwellers.[2901] Consistent with this ongoing pattern of conduct, after the liberation of Pursat, Khmer Republic officials were assembled by deceptive means and executed at Tuol Po Chrey on 25 or 26 April 1975.[2902] Prior to the events at Tuol Po Chrey, KHIEU Samphan was based at B-5 and around the time of the executions he had moved to the Phnom Penh railway station. At both locations, he met with other senior leaders, including zone secretaries and military leaders.[2903]

955. Therefore, although there is no evidence that he knew of the specific nature of the crimes committed at Tuol Po Chrey, the Chamber is satisfied that he had concurrent knowledge of the on-going pattern of targeting of Khmer Republic officials for arrest, execution, disappearance and other ill-treatment after an area was liberated and therefore knew that at least some Khmer Republic officials were being executed at the time the executions at Tuol Po Chrey occurred.

16.1.2.3. *Movement of Population (Phase Two)*

956. During phase two, there was an ongoing pattern of forced movements between rural areas characterised by ill-treatment, discrimination against 'New People', and deaths resulting from the conditions of transport, terror-inducing acts of Khmer Rouge soldiers and the use of force.[2904] Zones and Autonomous Sectors reported to the Centre concerning population movements during phase two.[2905] Thousands of people were moved by boat, truck and train to, from and past the largely deserted Phnom Penh.[2906] KHIEU Samphan also visited the countryside, in particular in early 1976, where he witnessed the living conditions of tens of thousands working with their bare

[2901] Section 14: Joint Criminal Enterprise, paras 830-834.
[2902] Section 12: Tuol Po Chrey, paras 662, 668, 670, 681.
[2903] Section 3: Historical Background, para. 144; Section 14: Joint Criminal Enterprise, para. 740.
[2904] Section 14: Joint Criminal Enterprise, paras 800-803.
[2905] Section 6: Communication Structure, paras 274-280; Section 11: Movement of the Population (Phase Two), paras 578, 580.
[2906] Section 11: Movement of the Population (Phase Two), paras 584, 591, 594-599.

hands.[2907] In contemporaneous public statements, KHIEU Samphan acknowledged that tens of thousands had been collected at various worksites.[2908] The forced allocation of labour pursuant to the Party's economic policy and the class struggle was reported and praised at instructional meetings and in party publications while the crimes were ongoing in phase two.[2909] News agencies and various foreign states also reported forced transfers, the poor conditions of transport and resulting deaths, and discrimination against 'New People' while the crimes were ongoing in phase two.[2910] The Ministries of Propaganda and Foreign Affairs collected and disseminated reports to senior leaders.[2911]

957. For all these reasons, taken together, the Chamber is therefore satisfied that KHIEU Samphan had concurrent knowledge of the crimes committed in the course of phase two.

16.1.3. *Knowledge Arising after the Commission of the Crimes*

958. After the commission of crimes in phases one and two and at Tuol Po Chrey, KHIEU Samphan, in public statements, demonstrated his knowledge of the evacuation of Phnom Penh, the justifications for it, the collection of tens of thousands of labourers at worksites, the policy to target enemies and the ongoing discrimination against 'New People'.[2912] The policies and resulting crimes were also discussed later during education sessions, conferences, speeches during Independence Day celebrations, congresses, in policy documents, and in *Revolutionary Flag* and *Revolutionary Youth* magazines after the crimes were committed. KHIEU Samphan attended indoctrination sessions, congresses and conferences where these matters were addressed.[2913] He had access to *Revolutionary Flag* and *Revolutionary Youth*

[2907] Section 8: Roles and Functions – Khieu Samphan, paras 374, 380; Section 14: Joint Criminal Enterprise, para. 759.
[2908] Section 8: Roles and Functions - Khieu Samphan, para. 383; Section 11: Movement of the Population (Phase Two), paras 581, 610; Section 14: Joint Criminal Enterprise, paras 738, 783, 785.
[2909] *See e.g.* Section 11: Movement of the Population (Phase Two), paras 577, 581, 584, 587, 602-606, 608, 610, 613-616, 621.
[2910] *See e.g.* Section 11: Movement of the Population (Phase Two), paras 576, 580, 585, 588, 611.
[2911] Section 6: Communication Structure, paras 252, 256, 267-268.
[2912] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[2913] Section 8: Roles and Functions - Khieu Samphan, para. 367; Section 16: The Criminal Responsibility of Khieu Samphan, paras 973-976.

which were delivered to ministries and offices of the Party Centre.[2914] Finally, news agencies, international organisations and various foreign states also reported allegations of atrocities, including forced transfers, inhumane conditions, discrimination against 'New People', and executions of former Khmer Republic officials. The Ministries of Propaganda and Foreign Affairs collected and disseminated these reports to senior leaders.[2915] Considering his diplomatic functions, the Chamber is satisfied that KHIEU Samphan knew of allegations of human rights violations, particularly as these matters have inevitably been raised during his trips abroad or in his meetings with foreign officials. Indeed, some reports were addressed to KHIEU Samphan in his capacity as President of the State Presidium.[2916]

959. On the basis of the foregoing, the Chamber finds that KHIEU Samphan was therefore also on notice of the crimes after their commission.

16.2. Commission through a Joint Criminal Enterprise

16.2.1. *Contribution*

960. The KHIEU Samphan Defence concedes that KHIEU Samphan contributed to the Khmer Rouge regime, including in his roles as diplomat, liaison with NORODOM Sihanouk and economist. It submits, however, that KHIEU Samphan's contributions were insignificant because he held no position of authority.[2917] The Chamber has found that KHIEU Samphan exercised some degree of authority during the time period relevant to Case 002/01, particularly by virtue of his economic and senior positions.[2918] However, under the sections addressing the charges that the Accused was responsible as a superior for the crimes, the Chamber finds that there is insufficient evidence to conclude that he exercised effective control over the

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[2914] Section 6: Communication Structure, para. 263.
[2915] Section 6: Communication Structure, paras 267-268.
[2916] *See e.g.* Section 8: Roles and Functions – Khieu Samphan, paras 372, 376, 382; Section 14: Joint Criminal Enterprise, paras 774, 821.
[2917] [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 212, 215-218, 221, 222, 226, 233, 236, 279, 283, 288, 300, 316-317; *see also*, Section 2: Preliminary Issues, para. 14 (concerning KHIEU Samphan's objection in relation to personal jurisdiction on the basis that he did not have a position of superior authority or exercise effective control. The Chamber dismissed this objection, finding that his superior position and effective control were matters relevant to his criminal responsibility and therefore could not bar jurisdiction at this stage of the proceedings).
[2918] Section 8: Roles and Functions - Khieu Samphan, para. 409; Section 16: The Criminal Responsibility of Khieu Samphan, paras 960-992.

perpetrators of the crimes during movement of population (phases one and two) and at Tuol Po Chrey.[2919] An accused need not, however, hold a position of authority, in fact or in law, in order to make a significant contribution to a JCE, although a position of authority may be relevant to this determination.[2920]

961. Between 1970 and 1975, KHIEU Samphan was FUNK Deputy Chairman, GRUNK Deputy Prime Minister, Minister of National Defence and Commander-in-Chief of the CPNLAF.[2921] From 1971, he was a candidate member of the Central Committee.[2922] In October 1975, KHIEU Samphan was appointed one of two members of Office 870 and assigned responsibility for "the Front and the Royal Government, and Commerce for accounting and pricing".[2923] In January 1976, KHIEU Samphan became a full-rights member of the Central Committee.[2924] In March 1976, he was appointed a member of the Purchasing Committee and chairman of the Banking Committee.[2925] Then, in April 1976, KHIEU Samphan formally became President of the State Presidium.[2926]

962. Acting in these positions, KHIEU Samphan stated that he was willing to do whatever he could to help and to refrain from doing anything that might hinder the Khmer Rouge.[2927] He attended policy meetings of the Standing and Central Committees, as well as Party congresses, where the common purpose and policies were planned and developed (Section 16.2.1.1). He attended and participated in meetings where instructions and lessons were given concerning the common purpose and policies (Section 16.2.1.2). He held economic positions where, drawing on his experience and education, he implemented elements of the common purpose relating to trade, imports/exports and commerce (Section 16.2.1.3). He made public statements endorsing the common purpose and policies, and encouraging all to build and defend the country according to the Party line (Section 16.2.1.4). Finally, in his roles as liaison with NORODOM Sihanouk and diplomat, he justified, defended and

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[2919] Section 16: The Criminal Responsibility of Khieu Samphan, paras 1016-1022, 1038.
[2920] Section 13: Applicable Law: Individual Criminal Responsibility, paras 693, 700, 702, 706.
[2921] Section 8: Roles and Functions - Khieu Samphan, paras 365, 376.
[2922] Section 8: Roles and Functions - Khieu Samphan, para. 363.
[2923] Section 8: Roles and Functions - Khieu Samphan, paras 390, 400.
[2924] Section 8: Roles and Functions - Khieu Samphan, paras 363, 384.
[2925] Section 8: Roles and Functions - Khieu Samphan, para. 400-407.
[2926] Section 8: Roles and Functions - Khieu Samphan, para. 381.
[2927] Section 14: Joint Criminal Enterprise, paras 759, 766.

praised the common purpose and policies, winning support for the Khmer Rouge and facilitating the secret and largely unhindered implementation of the common purpose through radical policies (Section 16.2.1.5).

963. For these reasons, set out in more detail below, the Chamber finds that KHIEU Samphan participated in the JCE, thereby making a significant contribution. In order to hold KHIEU Samphan responsible for crimes committed by Khmer Rouge soldiers and officials who are not participants in the JCE, it must be shown that the crime can be imputed to at least one JCE participant and that this participant, when using a direct perpetrator (that is, those Khmer Rouge soldiers and officials who physically committed the crimes), acted in accordance with the common purpose.[2928] The Chamber has found that the crimes can be imputed to various participants in the JCE.[2929] The Chamber's findings below that KHIEU Samphan planned, instigated, aided and abetted the crimes at issue (Sections 1.3-1.5) also demonstrate a sufficient link between the direct perpetrators and KHIEU Samphan.[2930] The Chamber is therefore satisfied that liability for these crimes can be directly imputed to KHIEU Samphan.

16.2.1.1. *Policy Meetings: Planning the Common Purpose*

964. KHIEU Samphan attended meetings of the Central and Standing Committees, as well as Party congresses, throughout the revolutionary and DK eras, at which the common purpose to implement rapid socialist revolution and defend the country, as well as the policies deemed necessary to achieve the common purpose, were planned and decided upon.

965. KHIEU Samphan was in contact with the CPK leadership from the early 1960s.[2931] After fleeing to the maquis in 1967, he moved from village to village in the liberated Zones under the protection of the Khmer Rouge. In 1969, he resided in

[2928] Section 13: Applicable Law: Individual Criminal Responsibility, para. 693.
[2929] Section 14: Joint Criminal Enterprise, paras 807, 810, 836.
[2930] *Krajišnik* Appeal Judgement, para. 226 (A sufficient link exists when a JCE member explicitly or implicitly requested a non-JCE member to commit a crime, or instigated, ordered, encouraged or otherwise availed himself of the non-JCE member to commit the crime forming part of the common purpose).
[2931] Section 8: Roles and Functions - Khieu Samphan, paras 356-358, 362.

places controlled by Ta Mok, where he witnessed the start of the armed struggle.[2932] The Chamber is therefore satisfied that, by 1969 when he joined the CPK,[2933] KHIEU Samphan was well aware of the common purpose decided upon at the First and Second Party Congresses, as well as its development during meetings of Party leaders in the liberated Zones, and that he assented to it, saying that he joined the CPK, despite disagreeing with some of their actions, for the sake of Cambodian independence.[2934] At the Third Party Congress, in 1971, collectively with other Party members, KHIEU Samphan affirmed the Party's strategic lines adopted at previous congresses, including commitment to the class struggle.[2935]

966. In June 1974, KHIEU Samphan, with other senior leaders, planned for the final offensive to liberate the country. The last prong of this plan was the transfer of city dwellers, and in particular those living in Phnom Penh. Those at the meeting were ordered to disseminate the plan.[2936] In early April 1975, KHIEU Samphan attended a meeting at which the decision to empty Phnom Penh of its inhabitants upon liberation was affirmed and thereafter disseminated through the ranks.[2937]

967. By 25 April 1975, at latest, KHIEU Samphan formed part of the group of CPK leaders residing at the Phnom Penh railway station, and thereafter at the former Ministry of Finance building and the Silver Pagoda, where meetings were held to discuss policies and plans to build and defend a self-reliant, independent and socialist country, such as the establishment of cooperatives.[2938] Later, KHIEU Samphan was based at K-3, and after POL Pot relocated, he regularly visited POL Pot's residence at K-1. At both locations, he met with other senior leaders, including NUON Chea.[2939]

968. KHIEU Samphan participated in the development of the plan, reflected in September and November 1975 policy documents, to forcibly allocate labour resources strategically according to production targets and infrastructure priorities,

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[2932] Section 8: Roles and Functions - Khieu Samphan, para. 362.
[2933] Section 8: Roles and Functions - Khieu Samphan, para. 362.
[2934] Section 14: Joint Criminal Enterprise, para. 728.
[2935] Section 3: Historical Background, para. 95; Section 14: Joint Criminal Enterprise, para. 733.
[2936] Section 3: Historical Background, paras 133-138; Section 14: Joint Criminal Enterprise, paras 735, 751; Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003.
[2937] Section 3: Historical Background, paras 144-149.
[2938] Section 8: Roles and Functions - Khieu Samphan, para. 373; Section 14: Joint Criminal Enterprise, para. 740.
[2939] Section 8: Roles and Functions - Khieu Samphan, paras 366, 373, 386, 408.

reach three tonnes of rice per hectare, focus on the construction of irrigation projects, and reward the 'Old People' to the detriment of the 'New People'.[2940] During the Fourth Party Congress in January 1976, collectively with other Party members, he adopted an amended Statute which affirmed the need for class struggle, democratic centralism,[2941] vigilance against enemies and commitment to the principles of independence-sovereignty and self-reliance.[2942]

969. Between February and March 1976, KHIEU Samphan attended Standing Committee meetings regarding the DK National Assembly elections, the retirement of NORODOM Sihanouk, the monitoring and transmission of news reports to the Standing Committee, the prevailing enemy situation, food shortages and illnesses in Sectors 103 and 106, food distribution, the rice export goal for 1977, a system of weekly reports from the Sector to the Standing Committee, trade and the establishment of committees for banking and purchasing, border problems and planned negotiations with Vietnam.[2943]

970. In May and June 1976, KHIEU Samphan attended Standing Committee meetings concerning foreign policy; commerce and banking contacts with China; border skirmishes with Vietnam; national defence issues, including establishment of an ordnance factory and airfield; the tasks of the army in defence and agricultural production; weaknesses in the Ministry of Health and Social Affairs; responsibility for production; distribution of medicines; prevention of diseases; allocation of labour; shortages of medicine and food.[2944]

971. In late 1976, KHIEU Samphan took part in developing the 1977 economic plan for agricultural production, allocation of labour and division of the people into categories. The plan was later disseminated in the November 1976 issue of

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[2940] Section 11: Movement of the Population (Phase Two), paras 586-587; Section 14: Joint Criminal Enterprise, paras 748-750.
[2941] Section 5: Administrative Structures, paras 200-201, 233.
[2942] Section 5: Administrative Structures, para. 201; Section 14: Joint Criminal Enterprise, para. 755.
[2943] Section 5: Administrative Structures, para. 203; Section 8: Roles and Functions - Khieu Samphan, paras 386-388; Section 14: Joint Criminal Enterprise, para. 768.
[2944] Section 8: Roles and Functions - KHIEU Samphan, paras 386-388; Section 14: Joint Criminal Enterprise, para. 768.

Revolutionary Flag.[2945]

972. The Chamber is therefore satisfied that his attendance at meetings and contribution to plans of the Party Centre demonstrate that he not only shared the common purpose which resulted in and/or involved policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials, but that he also played a key role in formulating the content of the common purpose and policies.

16.2.1.2. *Instructional Meetings: Disseminating the Common Purpose*

973. KHIEU Samphan attended and participated in instructional meetings and indoctrination sessions at which the common purpose and policies were disseminated. During the democratic revolution, KHIEU Samphan assisted with preparation of FUNK propaganda materials and conducted political training sessions in the liberated Zones.[2946] His attendance at, and participation in, instructional meetings concerning the Party's line continued after 17 April 1975.

974. In May 1975, KHIEU Samphan and other senior leaders, including representatives from all Zones, attended a 10-day meeting at the Silver Pagoda. At the meeting, Party leaders provided reasons justifying the evacuations of the cities and instructions to rapidly build and defend the country through the creation of cooperatives and the construction of dams and canals.[2947] Thereafter, between approximately 20 and 25 May 1975, KHIEU Samphan, other senior leaders, representatives from all military units and all District, Sector and Zone secretaries attended meeting(s) at either the Olympic Stadium or the Khmer-Soviet Technical Institute. Instructions were given on the organisation of cooperatives, elimination of private property, prohibition of currency and markets, and building of dams and canals.[2948]

975. KHIEU Samphan also led education sessions in Phnom Penh throughout the DK era. He lectured Zone, Sector and District officials, as well as ordinary cadres,

[2945] Section 11: Movement of the Population (Phase Two), paras 610, 621; Section 14: Joint Criminal Enterprise, paras 770-771.
[2946] Section 8: Roles and Functions - Khieu Samphan, para. 367.
[2947] Section 14: Joint Criminal Enterprise, para. 974.
[2948] Section 14: Joint Criminal Enterprise, para. 974.

about the identification and elimination of enemies, continuation of the armed struggle, establishment of cooperatives, building of dikes and canals, and completion of work quotas.[2949] He also conducted at least one political study session with returnees in late 1975. During this session, he justified urban evacuations and lectured that knowledge originating from education by the "colonialists and imperialists" had to be forgotten.[2950]

976. The Chamber finds that his attendance at and/or participation in these meetings demonstrate that he not only shared the common purpose which resulted in and/or involved policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials, but also that he played a key role in disseminating the content of the common purpose and policies. Considering his official positions and reputation among the people, his mere presence at meetings facilitated the effectiveness of the instructions delivered, by indicating to those in attendance that he had endorsed the common purpose and policies. This was even further emphasised when he delivered the instructions himself.

16.2.1.3. *Economist: Implementing the Common Purpose*

977. KHIEU Samphan played an important role in the DK economy and in particular in his capacity as a member of Office 870. He had responsibility for distribution of goods to the Zones; transportation of rice from the Zones to State warehouses and its management; international trade and imports/exports; and use of credit.[2951] From around October 1976, he exercised some level of oversight of the Commerce Committee, which reported to him, often seeking his instructions.[2952]

978. Zone officials made requests to KHIEU Samphan for the delivery of goods. KHIEU Samphan responded with delivery orders.[2953] KHIEU Samphan also visited state warehouses where he inspected products destined for export and encouraged

[2949] Section 8: Roles and Functions - Khieu Samphan, para. 379; Section 14: Joint Criminal Enterprise, paras 772, 818.
[2950] Section 8: Roles and Functions - Khieu Samphan, para. 379; Section 14: Joint Criminal Enterprise, para. 757.
[2951] Section 8: Roles and Functions - Khieu Samphan, paras 390, 406-407.
[2952] Section 8: Roles and Functions - Khieu Samphan, para. 406.
[2953] Section 8: Roles and Functions - Khieu Samphan, paras 406-407.

workers to be careful and attentive.[2954] Documents addressed or copied to KHIEU Samphan included reports of discussions with foreign trade delegations and other communications relating to international trade; reports on the quantities of rice sent to the state warehouses, and on the export of rice and other goods; purchase requests from various ministries and lists of imports from China; reports on the use of a line of credit extended to DK by China; and messages to, from or between FORTRA and Ren Fung.[2955]

979. The objective of the common purpose was establishment of self-reliant, modern agricultural state within 10-15 years, and thereafter an industrial economy. Rice and other agricultural exports would provide the capital necessary to fulfill this objective.[2956] The Chamber is therefore satisfied that his economic role demonstrates that he not only shared the common purpose, but also that he played a key role in implementing certain aspects of it.

16.2.1.4. *Public Statements: Endorsing the Common Purpose*

980. As the highest official in the internal resistance and thereafter in his capacity as a DK leader in particular as President of the State Presidium, KHIEU Samphan made statements in which he praised the policies and conduct of the democratic and socialist revolutions.[2957] He highlighted past successes and encouraged further action, in particular, in relation to agricultural production, the construction of irrigation projects and the elimination of enemies. He also justified the transfer of the population of Phnom Penh. From a position of high repute and respect, he endorsed and supported the policies of the Khmer Rouge, winning support among the people and internationally for the democratic and socialist revolutions. His public speeches also provided some of the few insights into the Khmer Rouge regime, both internationally and within Cambodia where secrecy was strictly enforced.

[2954] Section 8: Roles and Functions - Khieu Samphan, para. 407.
[2955] Section 8: Roles and Functions - Khieu Samphan, para. 406.
[2956] Section 11: Movement of the Population (Phase Two), para. 602; Section 14: Joint Criminal Enterprise, paras 748, 782.
[2957] Section 14: Joint Criminal Enterprise, para. 724 (in relation to the different phases of the revolution).

981. During the democratic revolution,[2958] on FUNK radio, KHIEU Samphan, appealed to the population, inside and outside the country, to join the resistance against the Khmer Republic.[2959] In June 1973 and early April 1975, he publicly asserted that FUNK guaranteed basic freedoms to the Cambodian people.[2960] On 31 December 1974, on FUNK radio, KHIEU Samphan announced the final assault on Phnom Penh,[2961] and in January 1975, he called on the people to annihilate the "traitorous" LON Nol clique, exhorting the people to join and support the resistance.[2962] In March 1975, FUNK issued a statement, allegedly following a late February 1975 National Congress chaired by KHIEU Samphan, which announced that the seven 'super traitors' should be killed, indicating that all other Khmer Republic officials would be spared.[2963] He thereafter publicly repeated this resolution to kill the 'super traitors', guaranteeing that other Khmer Republic officials would be spared if they joined the resistance "before it was too late".[2964]

982. On 15 March 1975, KHIEU Samphan called for intensified struggle, appealing to the people to join the cause of the internal resistance.[2965] On 1 April 1975, he announced on FUNK radio that the seven 'super traitors' had left, or were planning to leave the country to escape punishment.[2966] On 21 April 1975, KHIEU Samphan praised the army for 'liberating' the country, declared that all their enemies had died in agony; and noted the sacrifice of the people in the liberated Zones, and their efforts building dikes, canals and reservoirs.[2967]

983. After 27 April 1975, the Party leadership released a resolution, allegedly approved at a National Congress chaired by KHIEU Samphan, announcing that

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[2958] Section 14: Joint Criminal Enterprise, para. 724 (in relation to the different phases of the revolution).
[2959] Section 3: Historical Background, para. 100; Section 8: Roles and Functions - Khieu Samphan, para. 367.
[2960] Section 3: Historical Background, para. 99.
[2961] Section 3: Historical Background, para. 147.
[2962] Section 8: Roles and Functions - Khieu Samphan, para. 367.
[2963] Section 3: Historical Background, para. 120; Section 8: Roles and Functions - Khieu Samphan, para. 370; Section 14: Joint Criminal Enterprise, para. 819.
[2964] Section 3: Historical Background, para. 120; Section 8: Roles and Functions - Khieu Samphan, para. 370.
[2965] Section 8: Roles and Functions - Khieu Samphan, para. 367.
[2966] Section 3: Historical Background, para. 164.
[2967] Section 8: Roles and Functions - Khieu Samphan, para. 383; Section 14: Joint Criminal Enterprise, para. 832.

FUNK/GRUNK structures would be maintained for the time-being; emphasising that no foreign military bases would be tolerated in Cambodia; and re-affirming the government's commitment to the construction of a classless society, free from exploitation, in which all would strive to build and defend the country.[2968]

984. On 14 December 1975, KHIEU Samphan's speech, allegedly delivered at another FUNK National Congress, emphasised the collective policy in all fields and the requirement that all people work either in the fields or factories, increasing rice production and building irrigation projects. KHIEU Samphan also praised the efforts of the people and army during the democratic revolution, referring to the condemnation of the seven 'super traitors'. Finally, he encouraged the class struggle, emphasising the need to oppose the corrupt cultures of the oppressive classes, imperialism and colonialism.[2969]

985. In his inaugural speech at the first and probably only session of the People's Representative Assembly, on 11 April 1976, KHIEU Samphan lied when he claimed that fair and honest elections had been held and that policies regarding work sites, cooperatives and the ongoing class struggle had been endorsed by voters.[2970] Between 15 and 17 April 1976, at Independence Day celebrations, KHIEU Samphan announced the new government's resolve to defend national independence and concentrate on national reconstruction. He also praised the Cambodian people and revolutionary army for their role in the liberation of Phnom Penh, the end of the feudalist-landowner regime, and the ongoing class struggle to "topple" and "uproot" the capitalists.[2971]

986. The following year, KHIEU Samphan's Independence Day speech encouraged continued focus on building and defending the country, self-reliance and preserving the fruits of the revolution. He explained that, after the war, there were shortages of food, livestock and tools. He praised efforts in agriculture, in particular rice

[2968] Section 8: Roles and Functions - Khieu Samphan, para. 377; Section 14: Joint Criminal Enterprise, para. 742.
[2969] Section 5: Administrative Structures, para. 233; Section 8: Roles and Functions - Khieu Samphan, paras 370, 377; Section 14: Joint Criminal Enterprise, para. 754.
[2970] Section 5: Administrative Structures, para. 236; Section 8: Roles and Functions - Khieu Samphan, para. 381; Section 14: Joint Criminal Enterprise, para. 765.
[2971] Section 8: Roles and Functions - Khieu Samphan, para. 383; Section 11: Movement of the Population (Phase Two), para. 616; Section 14: Joint Criminal Enterprise, para. 767.

production, and the work of "progressive corps" at worksites where between 10,000 and 30,000 workers had been collected at each. He glorified the sacrifices of the people who were self-reliant and worked without machines. He explained that the 'New People' from Phnom Penh were becoming more patriotic as they realised that the road to independence was difficult. Finally, he emphasised that revolutionary vigilance remained necessary to continue the fight against all enemies, preventing them from committing aggression, interference or subversion.[2972] On 30 December 1977, KHIEU Samphan declared that the CPK was "a clear-sighted party", praised the army and people for fighting and defeating the U.S. imperialists and their lackeys, decried Vietnamese aggression and encouraged increased production by constantly adhering to the stance of independence.[2973]

987. These public statements, which whole-heartedly supported the revolution without a hint of criticism, demonstrate that KHIEU Samphan shared the common purpose and policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials for arrest, execution and disappearance. The statements also demonstrate that while his titles and positions were part of a façade, they did serve an important practical purpose as they were used to endorse CPK policies and to deceive people. Using these positions and titles, KHIEU Samphan made public statements in which he presented himself as a key leader and encouraged the Cambodian people and Khmer Rouge cadres to continue implementing the socialist revolution unhindered by the constraints of transparency or publicity, and by any interference and resistance from the people and international community which might otherwise have resulted.

16.2.1.5. *Diplomat: Defending the Common Purpose*

988. KHIEU Samphan's official roles as leader of the internal resistance and DK President of the State Presidium were important during the democratic and socialist revolutions, as the Khmer Rouge increasingly sought support from NORODOM

[2972] Section 8: Roles and Functions - Khieu Samphan, para. 383; Section 11: Movement of the Population (Phase Two), paras 581, 610; Section 14: Joint Criminal Enterprise, paras 738, 783, 785, 828.
[2973] Section 8: Roles and Functions - Khieu Samphan, para. 383; Section 14: Joint Criminal Enterprise, para. 738.

Sihanouk, other factions in Cambodia and in the international arena.[2974] KHIEU Samphan was widely reputed to be a man of probity and honour: he was generally perceived to be conscientious, incorruptible and principled, and to lead a relatively modest lifestyle.[2975] Thus KHIEU Samphan explained that he was an "expensive commodity" the CPK was anxious to acquire.[2976] Further, since NORODOM Sihanouk did not know POL Pot, it was incumbent upon KHIEU Samphan to establish relations with NORODOM Sihanouk and his supporters.[2977] KHIEU Samphan identified this role as important, if not indispensable.[2978]

989. In 1973, KHIEU Samphan accompanied NORODOM Sihanouk on visits to the liberated Zones. He also received various foreign dignitaries, including from Vietnam in 1974, and traveled abroad on behalf of FUNK/GRUNK, including a multi-country tour in 1974.[2979] In August 1975, KHIEU Samphan appealed to all GRUNK officials abroad to return to Cambodia. He then traveled to China and North Korea to negotiate the return of NORODOM Sihanouk. On 15 August 1975, KHIEU Samphan explained, during a speech in Peking, that Cambodia was engaged in rapidly building and defending the country: the entire country had become a big construction site.[2980]

990. After NORODOM Sihanouk's return to Cambodia following the liberation of the country, KHIEU Samphan accompanied him on visits to the countryside in early 1976, including to worksites where tens of thousands laboured on irrigation projects. On these visits, he praised the construction of dams and canals, and agricultural production. He sought to demonstrate the success and benefits of the socialist revolution, in which he himself believed, where all worked with their bare hands to build and defend their country.[2981]

991. As President of the State Presidium, KHIEU Samphan continued to perform

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[2974] Section 8: Roles and Functions – Khieu Samphan, paras 381-383; Section 14: Joint Criminal Enterprise, para. 724.
[2975] Section 8: Roles and Functions - Khieu Samphan, para. 360.
[2976] Section 14: Joint Criminal Enterprise, para. 728.
[2977] Section 3: Historical Background, para. 98.
[2978] Section 8: Roles and Functions - Khieu Samphan, para. 365.
[2979] Section 8: Roles and Functions - Khieu Samphan, para. 368.
[2980] Section 8: Roles and Functions - Khieu Samphan, para. 374; Section 14: Joint Criminal Enterprise, paras 757-758.
[2981] Section 8: Roles and Functions - Khieu Samphan, paras 374, 380; Section 14: Joint Criminal Enterprise, para. 759.

diplomatic and ceremonial functions, welcoming foreign delegations, hosting and attending receptions, sending and receiving diplomatic messages, and leading DK delegations abroad.[2982] In August 1976, at the Fifth Conference of Non-Aligned Countries in Sri Lanka, KHIEU Samphan affirmed that DK was devoted to the principles of self-reliance, independence and neutrality. He explained that the Khmer Rouge had succeeded in its democratic revolution by adhering to the correct Party line. He justified the evacuations on the basis of defence and the prevention of the starvation. Referring to the *Mayaguez* incident and the Siem Reap bombing, he declared that enemies were still carrying out attempts to destroy the results of the revolution and revolutionary vigilance therefore remained necessary.[2983]

992. KHIEU Samphan thereby endorsed the common purpose and policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials for arrest, execution and disappearance. His diplomatic efforts also demonstrate his on-going contributions to the common purpose and policies. By virtue of his diplomatic positions and his senior role, KHIEU Samphan himself, a respected intellectual and politician, won the Khmer Rouge defenders both in Cambodia and abroad who supported him in his efforts to justify and praise the Party's policies and actions, and to deflect attention and feared interference.

16.2.2. ***Intent***

993. The KHIEU Samphan Defence maintains that he was committed to Cambodian independence and the future well-being of the people: he did not intend the crimes, initially joining the Khmer Rouge only due to the threat of court-martial and execution in 1967.[2984] KHIEU Samphan's motivations for joining the Khmer Rouge and then for participating in the JCE cannot excuse his conduct or negate his criminal intent. Indeed, as set out below, the Chamber considers that his deliberate and continuous participation in the JCE, knowing of the crimes being committed, indicates his criminal intent.

[2982] Section 8: Roles and Functions - Khieu Samphan, para. 382.
[2983] Section 8: Roles and Functions - Khieu Samphan, para. 374; Section 14: Joint Criminal Enterprise, paras 731-732, 736, 738, 817, 827.
[2984] [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 208, 209, 212, 214, 283, 293, 295-296, 308-309, 313, 319, 327.

994. KHIEU Samphan asserted that he joined the revolution because it sought to build and defend a self-reliant and independent Cambodia.[2985] From 1969, when he joined the Party, he participated in meetings, congresses and conferences, where the common purpose was affirmed, developed and the policies to implement it were decided upon, including the class struggle against the 'New People', elimination of all elements of the former Khmer Republic, forced urban evacuations and movements between rural areas.[2986] KHIEU Samphan knew of the substantial likelihood that crimes would result from implementation of these policies.[2987] He knew that these policies did in fact result in and/or involve the crimes committed in the course of phases one and two of population movements and at Tuol Po Chrey.[2988] He also had further notice of the crimes after their commission.[2989] Despite this knowledge, he continued to contribute to and approve the progress of the democratic and socialist revolutions. He planned, disseminated, implemented, endorsed and defended the common purpose which resulted in and involved the policies to evacuate urban areas, move people between rural areas and target Khmer Republic officials for arrest, execution and disappearance.[2990] The Chamber has already found that that the crimes during phases one and two of population movements and at Tuol Po Chrey were committed pursuant to and in furtherance of these policies.[2991]

995. The Chamber therefore finds that KHIEU Samphan shared the intent of the other participants in the JCE to bring about the common purpose through implementation of the Party's population movement and targeting policies which resulted in and/or involved the crimes committed during movement of population (phases one and two) and at Tuol Po Chrey. He shared with the other participants in the JCE the intent to commit the other inhumane acts of forced transfer and attacks against human dignity during phases one and two of population movements, murder during phase one of the population movements, as well as murder and extermination at Tuol Po Chrey. Further, in light of his contributions developing, disseminating,

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[2985] Section 14: Joint Criminal Enterprise, para. 728.
[2986] Section 16: The Responsibility of the Accused Khieu Samphan, paras 964-992.
[2987] Section 16: The Responsibility of the Accused Khieu Samphan, paras 947-952.
[2988] Section 14: Joint Criminal Enterprise, paras 804-810, 835-837 Section 16: The Criminal Responsibility of Khieu Samphan, paras 953-957.
[2989] Section 16: The Criminal Responsibility of Khieu Samphan, paras 758-759.
[2990] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-959, 964-992.
[2991] Section 14: Joint Criminal Enterprise, paras 777-778, 804-810, 835-837.

endorsing and defending the Partly line on class struggle and the policy to target Khmer Republic officials, the Chamber is also satisfied KHIEU Samphan shared with the other participants in the JCE the requisite discriminatory intent for the crime of political persecution during phases one and two of population movements.

16.2.3. ***Conclusion***

996. The Chamber finds accordingly that KHIEU Samphan, through a JCE (basic form), committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey.

16.3. Other Modes of Liability

16.3.1. ***Crimes Committed During Movement of Population (Phase One)***

16.3.1.1. *Planning*

997. The Chamber is satisfied that KHIEU Samphan, with others, planned the transfer of the population of Phnom Penh which involved the crimes against humanity of murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity. The final offensive to liberate the country and the policy to transfer city dwellers were planned at a series of meetings between 1973 and early April 1975.[2992] KHIEU Samphan attended the June 1974 and early April 1975 meetings.[2993] The Chamber recalls that KHIEU Samphan was a candidate member of the Central Committee at the time of these meetings[2994] and therefore had the right to attend, even if he had no formal "decision rights".[2995] The Chamber is also satisfied that, pursuant to the principle of democratic centralism, he had the right to

[2992] Section 3: Historical Background, paras 133-147.
[2993] Section 3: Historical Background, paras 133-138, 144-147; Section 16: The Criminal Responsibility of Khieu Samphan, para. 966.
[2994] Section 8: Roles and Functions - Khieu Samphan, paras 363, 384; Section 16: The Criminal Responsibility of Khieu Samphan, para. 961.
[2995] Section 5: Administrative Structures, para. 202.

participate in the debates of this Committee.[2996] The Chamber has found that he expressed his opinion at the April 1975 meeting, but it has been unable to conclude that he intervened actively in the June 1974 meeting. However, even if he did not actively intervene, he had the right to do so and by his silence indicated assent.[2997] He thereby participated in these meetings and endorsed the resulting plans.

998. The Chamber has already found that senior leaders, such as NUON Chea and KHIEU Samphan, knew of the substantial likelihood that crimes would result on a large scale from policies grounded in the principle of secrecy; strict indoctrination of uneducated peasants on class struggle, including the identification of all 'New People' and former Khmer Republic officials as enemies; and the objective to pursue national independence at all costs.[2998] The plans reached in June 1974 and April 1975 were undertaken pursuant to and in furtherance of these policies.[2999] The Chamber finds that the plans reached in June 1974 and April 1975 necessarily involved and contemplated that crimes would be committed on a large scale in the course of phase one.

999. At the June 1974 meeting, the Central Committee discussed in detail the Party's "success" at Oudong, where the population was forcibly displaced, mistreated and many were executed, including Khmer Republic officials.[3000] Having reviewed this experience and knowing that there were already food shortages throughout the country, and in particular in Phnom Penh, the Central Committee nevertheless decided to empty urban areas, including Phnom Penh of their inhabitants,[3001] omitting any measures providing for the consent, the health or well-being of those being transferred. The Chamber is therefore satisfied that those at the June 1974 meeting, also attended by KHIEU Samphan, collectively drew up a plan that contemplated and involved the commission of the crimes committed in the course of phase one, namely murder, political persecution, extermination and the other inhumane acts of forced transfer and attacks against human dignity.

[2996] Section 5: Administrative Structures, para. 228.
[2997] Section 3: Historical Background, paras 142, 147.
[2998] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[2999] Section 14: Joint Criminal Enterprise, paras 804-810.
[3000] Section 3: Historical Background, paras 124-125, 134.
[3001] Section 3: Historical Background, paras 134, 161-167; Section 10: Movement of the Population (Phase One), paras 535-540; Section 14: Joint Criminal Enterprise, paras 737, 788.

1000. In early April 1975, senior leaders, including KHIEU Samphan, again addressed the evacuation of Phnom Penh. Prior experiences with the transfer of population from urban areas to the countryside,[3002] which formed part of a consistent pattern of conduct beginning before April 1975[3003] were discussed and reviewed. KHIEU Samphan and other attendees then affirmed the decision to forcibly transfer the population of Phnom Penh.[3004] However, despite reviewing prior experience with evacuations characterised by suffering, discriminatory violence against 'New People' and Khmer Republic officials, and deaths resulting from the conditions of movement, use of force and acts of terror, no provision was made to address all the similar conditions which could be anticipated during the planned transfer of the population from Phnom Penh. The Chamber is therefore satisfied that this plan contemplated and involved the commission of the crimes committed in the course of phase one.

1001. This plan preceded and contributed substantially to the crimes perpetrated during phase one. The plan was disseminated through the chain of command by those present at the June 1974 and April 1975 meetings.[3005] Consistent with a pattern of conduct which began before 17 April 1975 and continued thereafter,[3006] the Khmer Rouge military began implementing the plan only hours after 'liberating' Phnom Penh.[3007]

1002. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that the crimes would be committed in the course of phase one.[3008] The Chamber is therefore satisfied that in planning the evacuation of Phnom Penh, KHIEU Samphan intended or was aware of a substantial likelihood of the commission of these crimes upon the execution of the plan.

1003. The Chamber finds that KHIEU Samphan is criminally responsible for planning the crimes against humanity of murder, extermination, political persecution and other inhumane acts (comprising forced transfers and attacks against human

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[3002] Section 3: Historical Background, paras 144-145.
[3003] Section 14: Joint Criminal Enterprise, paras 791-794.
[3004] Section 3: Historical Background, paras 144-147.
[3005] Section 3: Historical Background, paras 133, 144, 148-151.
[3006] Section 14: Joint Criminal Enterprise, paras 791-794.
[3007] Section 10: Movement of the Population (Phase One), para. 464.
[3008] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.

dignity) committed in the course of movement of population (phase one).

16.3.1.2. *Ordering*

1004. The Chamber has already indicated that, while it is not necessary to establish a formal superior-subordinate relationship, ordering requires that an accused is in fact or in law in a position of authority to instruct another person to commit a crime.[3009] Evidence must also show that the accused, alone or collectively with others, issued, passed down or otherwise transmitted an order, including through intermediaries.

1005. The Chamber first notes that there is insufficient evidence that KHIEU Samphan alone issued any order to the perpetrators during the time period relevant to Case 002/01, or that any of the perpetrators committed crimes pursuant to an order received from him. KHIEU Samphan was not a direct part of the CPK military structure and the various positions that he held did not give him military authority sufficient to instruct others to commit crimes. While KHIEU Samphan was indeed able to influence others through public statements and radio announcements, the Chamber finds that these positions did not encompass the power to issue orders to the military command. The Chamber is satisfied that KHIEU Samphan never held direct military responsibilities.[3010] Even when he obtained the position of President of the State Presidium, this position was primarily ceremonial and did not in fact entail the authority to issue orders.

1006. The decision to forcibly transfer the population of Phnom Penh was taken collectively at the June 1974 meeting and affirmed at the early April 1975 meeting. Following both meetings, this decision was disseminated through the chain of command.[3011] The Chamber is satisfied that this conduct is properly characterised as ordering. Although KHIEU Samphan had the right to participate in Central Committee meetings and attended other meetings of the Party Centre in which he took part in the collective planning of the evacuation, this participation in these meetings does not demonstrate that he had sufficient authority to give orders collectively with

[3009] Section 13: Applicable Law: Individual Criminal Responsibility, para. 702.
[3010] Section 8: Roles and Functions – Khieu Samphan, paras 365, 378, 409.
[3011] Section 3: Historical Background, paras 134, 142-145, 148.

the other members of these meetings.[3012] KHIEU Samphan was also a Central Committee member and a candidate member of the Standing Committee. These positions gave him the capacity to influence the decision-making process particularly because decisions were made pursuant to the principle of democratic centralism and because the other CPK leaders, including POL Pot, placed great trust in him. The Chamber is therefore satisfied that the evidence demonstrates that KHIEU Samphan held positions of some authority. Indeed, he was within close proximity to other senior leaders throughout the democratic and socialist revolutions,[3013] and made significant contributions to the policies decided and implemented by the Khmer Rouge regime, notably through his regular attendance at and participation in key meetings of the Party Centre where the common purpose and policies, including the decision to evacuate Phnom Penh, were planned.[3014]

1007. The Chamber considers, however that in the absence of any evidence that KHIEU Samphan issued any orders, his close connections with the Khmer Rouge regime do not lead to the conclusion that the only reasonable inference from the evidence was that he had the ability to issue orders alone or collectively. In reaching this conclusion, the Chamber also weighed the prevalence of democratic centralism as a decision-making policy within the Party Centre. In addition, the Chamber has not identified any evidence that, prior to 17 April 1975 or while the movement of population of Phnom-Penh was on going the following week, KHIEU Samphan had sufficient authority to issue orders, alone or collectively with other senior leaders. The Chamber therefore dismisses the charge that he is criminally responsible for ordering the crimes committed during movement of population (phase one).

16.3.1.3. *Aiding and Abetting*

1008. The Chamber is satisfied that KHIEU Samphan provided practical assistance, encouragement and moral support to the perpetrators of the crimes committed during movement of population (phase one). In public speeches during the final offensive on Phnom Penh, KHIEU Samphan praised the Khmer Rouge; claimed that the internal resistance movement was committed to upholding human rights; and declared the

[3012] Section 3: Historical Background, para. 152; Section 5: Administrative Structures, para. 228.
[3013] Section 8: Roles and Functions - Khieu Samphan, paras 408-409.
[3014] Section 16: The Criminal Responsibility of Khieu Samphan, paras 964-976.

resolution to kill the seven 'super traitors'. Further, he encouraged the people in Khmer Republic territory and Khmer Republic officials to join the Khmer Rouge, claiming that only the seven 'super traitors' would be punished. KHIEU Samphan also secured the support of NORODOM Sihanouk whose praise of the Khmer Rouge reassured local and international observers. Finally, after the crimes were committed, KHIEU Samphan praised the Cambodian army and people for their victory, lauded the policies of the Khmer Rouge to conduct socialist revolution through collectivisation, denounced the former regime, and justified the evacuation of Phnom Penh in speeches to the people of Cambodia, statements to the international community and indoctrination sessions with returnees.[3015]

1009. This practical assistance, encouragement and moral support had a substantial effect on the commission of crimes during phase one. KHIEU Samphan played an important, if not indispensable, role with the Khmer Rouge due to his reputation and popularity among the people and internationally.[3016] Based on his reputation, official positions in GRUNK and DK, and unreserved support of the Khmer Rouge, the Chamber is satisfied that the perpetrators were encouraged by KHIEU Samphan's public statements.

1010. The Chamber is also satisfied that, based on his reputation, those residing in Khmer Republic territory and, in particular, Khmer Republic officials, other than the seven 'super traitors', were led to believe that they would not be ill-treated after liberation. This is demonstrated by the welcome the Khmer Rouge received upon 'liberating' Phnom Penh, and the willingness of Khmer Republic officials to respond to instructions to assemble before they were executed en masse.[3017] The false sense of security promoted by KHIEU Samphan made it easier to deceive the urban population and Khmer Republic officials.[3018]

1011. Finally, the Chamber is satisfied that the perpetrators knew, or at least anticipated before and during the transfer of the population of Phnom Penh, that

[3015] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[3016] Section 8: Roles and Functions - Khieu Samphan, paras 367, 376.
[3017] Section 10: Movement of the Population (Phase One), paras 464, 501-515; Section 14: Joint Criminal Enterprise, para. 831.
[3018] Section 3: Historical Background, para. 120.

KHIEU Samphan would provide assistance and endorsement after the fact. Indeed, such an expectation was consistent with the support he provided throughout the democratic revolution, in particular during the final offensive on Phnom Penh and in the initial days after liberation.[3019] KHIEU Samphan also concurred with the decision to transfer the population.[3020] The Chamber is therefore satisfied that the plan to evacuate Phnom Penh relied in part on the guarantee that KHIEU Samphan would continue to provide assistance afterwards thereby encouraging the perpetrators and having a substantial effect on the commission of the crimes.

1012. KHIEU Samphan knew that the crimes committed during phase one would likely be committed[3021] and that his conduct assisted or facilitated their commission. The Chamber is also satisfied that KHIEU Samphan was aware at least of the essential elements of the crimes. With this knowledge, KHIEU Samphan provided assistance, encouragement and moral support to the perpetrators of crimes committed during phase one.

1013. The Chamber finds that KHIEU Samphan is criminally responsible for aiding and abetting the crimes against humanity of murder, extermination, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) committed in the course of movement of population (phase one).

16.3.1.4. *Instigating*

1014. Prior to the capture of Phnom Penh, KHIEU Samphan made numerous public speeches praising the Khmer Rouge, lending his stature to plans of the Party Centre and prompting Khmer Rouge soldiers and cadres to take action to implement the policy to forcibly transfer the population of Phnom Penh.[3022] His statements were widely dispersed and due to the trust he enjoyed with the general public, Khmer Rouge soldiers and cadres would have been encouraged to adhere to the call to violence contained in these speeches. KHIEU Samphan also prompted the perpetrators to take action in furtherance of party policy by his presence at meetings discussing the forced transfer of the inhabitants of Phnom Penh. In particular, he

[3019] Section 14: Joint Criminal Enterprise, paras 980-987.
[3020] Section 3: Historical Background, para. 152.
[3021] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-957.
[3022] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-982.

supported the Party Centre in decisions taken at the June 1974 and April 1975 meetings to evacuate the city.[3023] In those meetings, KHIEU Samphan applauded the decision to forcibly transfer the population of Phnom Penh. Furthermore, KHIEU Samphan personally participated in the indoctrination of people on class struggle and knew that such indoctrination would inevitably lead to crimes.[3024] The only reasonable expectation was that vast numbers of people would suffer and/or die during the forced population movements. Having actively encouraged and prompted people in Cambodia to join the Khmer Rouge and participate in the Party's policies, KHIEU Samphan took no steps to mollify or diminish the violence inherent to the forced transfer of people. All of these acts and omissions substantially contributed to the conduct of the Khmer Rouge soldiers and cadres who committed crimes during the forced transfer of the population of Phnom Penh.

1015. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that the crimes would be committed in the course of phase one. The Chamber is therefore satisfied that by making public statements encouraging Khmer Rouge soldiers and cadre, he intended or was aware of a substantial likelihood of the commission of these crimes during movement of population (phase one). The Chamber therefore finds that KHIEU Samphan is criminally responsible for instigating the crimes against humanity of murder, extermination, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) committed during movement of population (phase one).

16.3.1.5. *Superior Responsibility*

1016. Superior responsibility depends upon an accused's ability to exercise effective control over subordinates, that is the actual power to take reasonable and necessary measures to prevent or punish the crimes.[3025]

1017. The crimes committed in the course of movement of population (phase one) were carried out by Khmer Rouge soldiers under the direct authority of their

[3023] Section 3: Historical Background, paras 133, 142, 144, 146.
[3024] Section 14: Joint Criminal Enterprise, paras 973-976.
[3025] Section 13: Applicable Law: Individual Criminal Responsibility, para. 715.

commanders, Zone and Autonomous Sector secretaries.[3026] KHIEU Samphan was present, together with army officers, at B-5 during the final offensive against Phnom Penh.[3027] He addressed combatants in various broadcasts.[3028] However, the Chamber has already found that, while he participated in meetings where CPK policies were discussed, KHIEU Samphan did not have sufficient authority to order crimes in phase one (as set out above in relation to the charge of ordering the crimes, Section 16.3.1.2).[3029] In the circumstances, the Chamber concludes that KHIEU Samphan did not have effective control prior to or during the commission of crimes in phase one and therefore had no accompanying duty to prevent the crimes.

1018. The Chamber next considers the Accused's effective control, in fact or in law, after the commission of the crimes, and whether he had any accompanying duty to punish the perpetrators. Although KHIEU Samphan held various senior titles in the FUNK/GRUNK and DK façades which identified him publicly as the most senior leader of the internal resistance and, from April 1976, head of state,[3030] there is no evidence that he issued any orders to the perpetrators during the time period relevant to Case 002/01. Acting in these positions, however, and bearing in mind his public announcements concerning the seven 'super traitors', KHIEU Samphan contributed to the JCE, assisting, encouraging, defending and otherwise supporting the Khmer Rouge regime.[3031] The evidence does not however, demonstrate that KHIEU Samphan exercised effective control over the direct perpetrators of the crimes by virtue of these positions in FUNK/GRUNK or DK.

1019. Further, within the Party structures, it was NUON Chea, not KHIEU Samphan, who had responsibility for disciplining Party members.[3032] KHIEU Samphan was a candidate member, and as of January 1976, a full rights member of the Central Committee. However, this body had no ultimate decision-making authority: rather, the Standing Committee was the highest decision-making body throughout the DK

[3026] *See* Section 5: Administrative Structures, para. 240; Section 10: Movement of the Population (Phase One), paras 460-461, 470, 496; Section 14: Joint Criminal Enterprise, para. 788.
[3027] Section 14: Joint Criminal Enterprise, para. 735.
[3028] Section 3: Historical Background, para. 100.
[3029] Section 16: The Criminal Responsibility of Khieu Samphan, para. 1007.
[3030] Section 5: Administrative Structures, paras 232-233; Section 8: Roles and Functions - Khieu Samphan para. 381; Section 14: Joint Criminal Enterprise, paras 754, 766.
[3031] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[3032] Section 7: Roles and Functions – Nuon Chea, para. 325.

era.[3033] The Chamber has found that the principle of democratic centralism afforded KHIEU Samphan the opportunity to participate in meetings of the Party Centre he attended, in particular the Standing Committee, but that does not establish that he exercised effective control.[3034]

1020. KHIEU Samphan did have authority over certain economic bodies of the Party Centre, in particular after he assumed a level of oversight of the Commerce Committee in late 1976.[3035] However, the perpetrators of the crimes in phase one did not belong to these economic bodies and there is no evidence that KHIEU Samphan exercised effective control over the perpetrators through his economic authority. The Chamber has found that KHIEU Samphan exercised some level of broader authority. However, this finding was limited to his ability to ensure the safety of some of his family members in the countryside in 1978.[3036] It therefore cannot form the basis of any finding that he exercised effective control during the time period at issue in Case 002/01.

1021. Finally, the Chamber notes KHIEU Samphan's continuing proximity to senior leaders throughout the time period relevant to Case 002/01, and his continuing importance in the Khmer Rouge regime and significant participation in the JCE, in particular his regular attendance at and participation in meetings and plans of the Standing Committee and other organs of the Party Centre.[3037] The Chamber is not satisfied that this evidence leads only to a conclusion that he exercised effective control. Substantial influence alone does not establish effective control within a command structure.[3038]

1022. Overall, the Chamber is not satisfied from the totality of the evidence that KHIEU Samphan was a superior, in the sense of having the ability to decide upon and take measures to prevent or punish the crimes. Indeed, there are other reasonable inferences that may be drawn from the totality of the evidence other than KHIEU

[3033] Section 5: Administrative Structures 202-203.
[3034] Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003.
[3035] Section 8: Roles and Functions - Khieu Samphan, paras 403, 406; Section 16: The Criminal Responsibility of Khieu Samphan, para. 997.
[3036] Section 8: Roles and Functions - Khieu Samphan, para. 409.
[3037] Section 8: Roles and Functions - Khieu Samphan, paras 408-409; Section 16: The Criminal Responsibility of Khieu Samphan, paras 964-992.
[3038] *Delalić et al.* Appeal Judgement, paras 258, 266.

Samphan's effective control over the perpetrators. The Chamber therefore dismisses the charge that the Accused is responsible as a superior for the crimes committed in the course of movement of population (phase one).

16.3.2. *Crimes Committed During Movement of Population (Phase Two)*

16.3.2.1. *Planning*

1023. The Chamber is satisfied that, over a series of meetings beginning in late April 1975 and continuing throughout the relevant time period, KHIEU Samphan, with others, planned the crimes committed in the course of movement of population (phase two). The Chamber has already found that senior leaders, such as NUON Chea and KHIEU Samphan, knew of the substantial likelihood that crimes would result on a large scale from the implementation of policies grounded in the principle of secrecy; strict indoctrination of uneducated peasants on class struggle, which included the identification of all 'New People' and former Khmer Republic officials as enemies; and the objective to pursue national independence at all costs.[3039] The plans for movement of population (phase two) were undertaken pursuant to and in furtherance of these policies.[3040] The Chamber finds that the plans reached necessarily involved and contemplated that crimes would be committed on a large scale in the course of phase two.

1024. From 25 April 1975, at the latest, KHIEU Samphan met with other senior leaders concerning policies to build and defend a self-reliant, independent and socialist country.[3041] The plan was to create a classless society in which all would be organised into cooperatives to rapidly build and defend the country, focusing in particular on rice production and irrigation projects.[3042] These plans originated in, and were based on the Party's experience in the liberated Zones where a consistent pattern of urban evacuations and movements between rural areas had emerged prior to 17 April 1975 and continued thereafter.[3043] Despite this experience, there is no evidence

[3039] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3040] Section 14: Joint Criminal Enterprise, paras 804-810.
[3041] Section 8: Roles and Functions - Khieu Samphan, para. 373; Section 14: Joint Criminal Enterprise, para. 740.
[3042] Section 14: Joint Criminal Enterprise, paras 742-743.
[3043] Section 14: Joint Criminal Enterprise, paras 736, 800-803.

that the plan included any measures providing for the well-being or consent of the people to be gathered into cooperatives. This initial plan therefore contemplated and involved the crimes committed in the course of phase two.

1025. In late 1975, KHIEU Samphan, collectively with others, developed a specific economic plan. This plan acknowledged the shortages of food and medicine especially affecting the 'New People'. Nevertheless, the plan was to allocate labour strategically according to the Party's rice production target and infrastructure priorities, expand the cooperatives, and reward the 'Old People' to the detriment of the suspect 'New People'. Specific, large-scale population movements were also decided upon, such as from southern Cambodia to Sector 103, the Northwest and Central (old North) Zones.[3044] Despite the Party's extensive experience with urban evacuations and movements between rural areas, there is no evidence that the plan which emerged in late 1975 included any measures providing for the consent, the health or well-being of those to be moved. Accordingly, the late 1975 plan to move people between rural areas contemplated and involved the crimes committed in the course of phase two.

1026. Thereafter, KHIEU Samphan also participated in developing the economic plan for 1977. Largely affirming the goals and policies set out in previous plans, the 1977 plan again provided for the strategic allocation of labour according to infrastructure priorities and a new, more ambitious production target, and the division of people according to their class.[3045] Yet, despite the Party's experience with adverse consequences of consistent patterns of urban evacuations and movements between rural areas, the plan did not include any measures providing for the consent, the health or well-being of those to be moved in 1977. The 1977 plan to move people between rural areas therefore contemplated and involved the crimes committed in the course of phase two.

1027. These 1975 and 1977 plans preceded and substantially contributed to the commission of crimes during phase two. After being made, these plans were

[3044] Section 11: Movement of the Population (Phase Two), paras 585-586; Section 14: Joint Criminal Enterprise, paras 748-749.
[3045] Section 11: Movement of the Population (Phase Two), paras 610, 621; Section 14: Joint Criminal Enterprise, paras 770-771.

disseminated through the Party ranks including in policy documents and issues of *Revolutionary Flag*.[3046] The Party Centre, in conjunction with Zone, Sector and District officials, controlled the means and modes of transportation of those who were displaced.[3047] As provided for in the plans and consistent with a pattern of conduct, people were then transferred to work-sites and areas reputedly with the most fertile land.[3048]

1028. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that the crimes would be committed in the course of phase two.[3049] Despite this knowledge, collectively with others, he continued to plan economic policies which relied upon forced population movements as a cornerstone and ignored the principles of necessity and proportionality.[3050] The Chamber therefore finds that KHIEU Samphan intended, or was aware of the substantial likelihood of, the commission of crimes upon execution of these plans.

1029. The Chamber finds that KHIEU Samphan is criminally responsible for planning the crimes against humanity of extermination, political persecution and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed in the course of movement of population (phase two).

16.3.2.2. *Ordering*

1030. The Chamber is satisfied that instructions from the Centre were issued concerning movement of population (phase two) and that these instructions constituted orders. The Chamber has found however that there is no evidence that KHIEU Samphan himself issued any order to the perpetrators during the time period relevant to Case 002/01, or that any of the perpetrators committed crimes pursuant to an order received from him. Although the Chamber has found that KHIEU Samphan influenced the formulation of DK policies where they were discussed in accordance

[3046] Section 6: Communication Structure, paras 274-286; Section 11: Movement of the Population (Phase Two), para. 577.
[3047] Section 11: Movement of the Population (Phase Two), para. 578.
[3048] Section 11: Movement of the Population (Phase Two), paras 584-626; Section 14: Joint Criminal Enterprise, paras 800-803.
[3049] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3050] Section 9: Applicable Law: Crimes Against Humanity, para. 450.

with the principle of democratic centralism, that he remained in close proximity to the leaders of the Khmer Rouge regime, and that he retained positions in GRUNK and as President of the State Presidium, the Chamber was unable to conclude that the only reasonable inference from the evidence was that he had the ability to issue orders alone or collectively.[3051] The fact that KHIEU Samphan had a position of authority over economic bodies, in particular from late 1976 when he assumed some level of oversight of the Commerce Committee does not change these findings. Indeed, despite his influence and participation in the planning of the crimes during movement of population phase two, the Chamber is unable to ascertain whether he had decision-making authority in relation to these plans and in turn, whether the orders emanated from, or even if they were merely transmitted by, KHIEU Samphan. In any case, the evidence is unclear as to his precise role and the Chamber is not satisfied on the evidence before it that the Commerce Committee issued orders to the perpetrators. The Chamber therefore dismisses the charge that KHIEU Samphan ordered the crimes committed in the course of movement of population (phase two).

16.3.2.3. *Instigating*

1031. Having participated in the planning of movement of population (phase two), KHIEU Samphan made numerous public speeches prior to and during these forced transfers of the population, praising the Khmer Rouge and supporting the policies to build the economy by collective work in fields. These public speeches prompted Khmer Rouge soldiers and cadres to forcibly move the population during phase two. In April 1975, late 1975 and late 1976, knowing that living conditions in the country were dire, KHIEU Samphan, along with the other Party leaders, nevertheless planned forced population movements without providing for the consent, the health or the well-being of those to be transferred.[3052] He then endorsed these plans publicly. In December 1975, KHIEU Samphan gave a speech emphasising the collective policy and the requirement that all people work in the fields or in factories, increasing rice production and building irrigation projects.[3053] He praised the efforts of the people and army. Likewise, in April 1976, he made a speech claiming falsely that the policies

[3051] Section 16: The Criminal Responsibility of Khieu Samphan, paras 1005-1007.
[3052] Section 16: The Criminal Responsibility of Khieu Samphan, para. 952.
[3053] Section 16: The Criminal Responsibility of Khieu Samphan, para. 984.

regarding work-sites, cooperatives and the on-going class struggle had been endorsed by voters of the PRA. He also praised the Cambodian people and the RAK for their role in the liberation of Phnom Penh, while knowing the crimes that the first population movement had entailed. These public statements whole-heartedly supported the forced movement of the population without a hint of criticism. KHIEU Samphan also maintained his positions in FUNK/GRUNK lending an imprimatur of legitimacy to the Khmer Rouge without addressing the inevitable suffering associated with the forced transfer of the population to worksites and collectives.[3054]

1032. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that the crimes would be committed in the course of phase two. The Chamber is therefore satisfied that by making public statements encouraging Khmer Rouge soldiers and cadre, he intended or was aware of a substantial likelihood of the commission of these crimes during movement of population (phase two). These acts and omissions prompted Khmer Rouge soldiers and cadres to forcibly transfer thousands of people to worksites and fields during movement of population (phase two). KHIEU Samphan's actions substantially contributed to the commission of crimes during this movement of population. The Chamber therefore finds that KHIEU Samphan is criminally responsible for instigating the crimes against humanity of extermination, political persecution and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed in the course of movement of population (phase two).

16.3.2.4. *Aiding and Abetting*

1033. The Chamber is satisfied that KHIEU Samphan provided practical assistance, encouragement and moral support to the perpetrators of crimes during movement of population (phase two). In public statements in the months leading up to and during phase two, KHIEU Samphan praised the Khmer Rouge; justified and endorsed their policies to build and defend the country by strategic allocation of labour forces according to production targets, infrastructure priorities and the class struggle; and justified or denied their crimes. He repeated these themes during indoctrination sessions, including of intellectuals returning from abroad. KHIEU Samphan also

[3054] Section 16: The Criminal Responsibility of Khieu Samphan, para. 983.

performed diplomatic duties and liaised with NORODOM Sihanouk, securing support and praising the conduct of the socialist revolution, including the manual labour of all to build and defend the country.[3055]

1034. This practical assistance, encouragement and moral support had a substantial effect on the commission of crimes during phase two. Based on his reputation, official positions in GRUNK and DK, and unreserved support of the Khmer Rouge,[3056] the Chamber is satisfied that the perpetrators were encouraged by his public statements.

1035. KHIEU Samphan knew that the crimes committed during phase two would likely be committed[3057] and that his conduct assisted or facilitated their commission. The Chamber is also satisfied that KHIEU Samphan was aware at least of the essential elements of the crimes. With this knowledge, KHIEU Samphan provided assistance, encouragement and moral support to the perpetrators of crimes committed during phase two.

1036. The Chamber finds that KHIEU Samphan is criminally responsible for aiding and abetting the crimes against humanity of extermination, political persecution and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed in the course of movement of population (phase two).

16.3.2.5. *Superior Responsibility*

1037. During phase two, the perpetrators were Khmer Rouge cadres and officials under the direct authority of the Zones and Sectors and the Army General Staff, subject to the ultimate decision-making authority of the Standing Committee.[3058] The perpetrators of the crimes in phase one were similarly situated and the Chamber therefore adopts its reasoning above concerning the absence of adequate evidence that KHIEU Samphan exercised effective control over such perpetrators during the time

[3055] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[3056] Section 16: The Criminal Responsibility of Khieu Samphan, para. 976.
[3057] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3058] Section 5: Administrative Structures, paras 240, 242; Section 11: Movement of the Population (Phase Two), paras 577-578.

period at issue in Case 002/01.[3059]

1038. The Chamber has also considered evidence that the Commerce Committee played an initial role in organising population movements during phase two.[3060] However, the evidence is unclear as to the specifics of this role and the Chamber is unable to determine whether the Commerce Committee exercised effective control over the perpetrators. The Chamber is also unable to determine that the Commerce Committee continued to play any role in movements after early 1976. Accordingly, although the Accused exercised some authority over certain economic bodies, in particular oversight of the Commerce Committee from late 1976, the Chamber is not satisfied that this evidence demonstrates his effective control over the perpetrators of the crimes in phase two. The Chamber therefore dismisses the charge that KHIEU Samphan is responsible as a superior for the crimes committed in the course of movement of population (phase two).

16.3.3. ***Crimes Committed at Tuol Po Chrey***

16.3.3.1. *Planning*

1039. Throughout the democratic revolution, Khmer Republic officials were targeted for arrest, execution and disappearance after they surrendered or were rendered *hors de combat*.[3061] The Party leadership endorsed the policy to target Khmer Republic officials, at the latest, during a meeting of the Central Committee in June 1974. Indeed, by June 1974, this targeting policy was closely linked to the population movement policy: moving people to the cooperatives facilitated the identification and elimination of government agents, spies and pacifist agents.[3062] At the June 1974 meeting, which KHIEU Samphan attended and in which he participated, the Central Committee decided upon a plan for the final offensive to liberate the country.[3063] Prior experiences, in particular at Oudong where Khmer Republic officials were executed en masse, were discussed at this meeting and formed the basis for the plan which

[3059] Section 16: The Criminal Responsibility of Khieu Samphan, paras 1018-1022.
[3060] Section 11: Movement of the Population (Phase Two), para. 578; Section 14: Joint Criminal Enterprise, paras 748, 809.
[3061] Section 3: Historical Background, paras 120-123
[3062] Section 3: Historical Background, para. 118.
[3063] Section 3: Historical Background, paras 132-138; *see also*, Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003.

resulted. The Chamber is therefore satisfied that this plan contemplated and involved the arrest, execution and disappearance of Khmer Republic officials in conjunction with the transfer of the population of urban areas.[3064] During a meeting of senior leaders in early April 1975, which KHIEU Samphan attended and in which he participated, the plan for the final offensive was affirmed.[3065]

1040. The Chamber has already found that senior leaders, such as NUON Chea and KHIEU Samphan, knew of the substantial likelihood that crimes would result on a large scale from policies grounded in the principle of secrecy; strict indoctrination of uneducated peasants on class struggle, including the identification of all 'New People' and former Khmer Republic officials as enemies; and the objective to pursue national independence at all costs.[3066] The plan reached in relation to the targeting of Khmer Republic officials was undertaken pursuant to and in furtherance of these policies.[3067] The Chamber finds that the plan reached necessarily involved and contemplated that crimes would be committed on a large scale, including at Tuol Po Chrey.

1041. This plan preceded and substantially contributed to the crimes perpetrated at Tuol Po Chrey. The plan was disseminated through the chain of command by those present at the June 1974 and April 1975 meetings.[3068] In the days following the liberation of Pursat, which the Chamber has found occurred not long after the liberation of Phnom Penh on 17 April 1975, the Northwest Zone Committee, chaired by Secretary ROS Nhim, ordered the assembly and execution of Khmer Republic officials in Pursat.[3069] This order was consistent with the plan for the final offensive and with a pattern of conduct which began before 17 April 1975 and continued thereafter.[3070] The Chamber is therefore satisfied that it was taken pursuant to the plan reached at the June 1974 meeting and affirmed at the April 1975 meeting. Following these orders, Khmer Rouge cadres, acting under the authority of the Northwest Zone Committee and Secretary ROS Nhim, began assembling Khmer Republic officials

[3064] Section 16: The Criminal Responsibility of Khieu Samphan, paras 997-1003.
[3065] Section 3: Historical Background, paras 144-147; *see also,* Section 16: The Criminal Responsibility of Khieu Samphan paras 997-1003.
[3066] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3067] Section 14: Joint Criminal Enterprise, paras 835-836.
[3068] Section 3: Historical Background, paras 134, 148-151.
[3069] Section 12: Tuol Po Chrey, paras 662-665.
[3070] Section 14: Joint Criminal Enterprise, paras 791-794.

approximately on 24 April 1975, and later around 25 or 26 April 1975, thereafter transferring them to Tuol Po Chrey where they were executed.[3071]

1042. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that crimes, such as those committed at Tuol Po Chrey, would be committed.[3072] The Chamber is therefore satisfied that in planning the final offensive to liberate the country, KHIEU Samphan intended or was aware of a substantial likelihood of the commission of these crimes upon the execution of the plan.

1043. The Chamber therefore finds that KHIEU Samphan is criminally responsible for planning the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

16.3.3.2. *Ordering*

1044. On the evidence before it, the Chamber is unable to conclude that KHIEU Samphan had authority in fact or in law to give orders when the policy concerning elimination of Khmer Republic officials was decided upon or disseminated.[3073] The Chamber notes that KHIEU Samphan did participate in the dissemination of this policy in instructional meetings that he conducted or to which he contributed:[3074] however, this followed the execution of Khmer Republic officials at Tuol Po Chrey. The Chamber therefore dismisses the charge that KHIEU Samphan ordered the execution of former Khmer Republic officials at Tuol Po Chrey.

16.3.3.3. *Instigating*

1045. Prior to the capture of Phnom Penh, KHIEU Samphan made numerous public speeches praising the Khmer Rouge, lending his stature to plans of the Party Centre and prompting Khmer Rouge soldiers and cadres to target Khmer Republic officials for mistreatment.[3075] His statements were widely dispersed and due to the trust he enjoyed with the general public, they would have been encouraged to adhere to the call to violence contained in these speeches. His public statements therefore

[3071] Section 12: Tuol Po Chrey, paras 667-681.
[3072] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3073] Section 16: The Criminal Responsibility of Khieu Samphan, paras 1005-1007.
[3074] Section 16: The Criminal Responsibility of Khieu Samphan, paras 964-987.
[3075] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-982

substantially contributed to the conduct of the Khmer Rouge soldiers who executed the Khmer Republic officials at Tuol Po Chrey. KHIEU Samphan also prompted the perpetrators to take action in furtherance of these plans by his presence at meetings reaffirming the policy of targeting Khmer Republic officials.[3076] In particular, the Chamber notes that he supported the Party Centre in decisions taken at the June 1974 and April 1975 meetings and that ROS Nhim's order to assemble and execute Khmer Republic Officals at Tuol Po Chrey was taken pursuant to these decisions.[3077] KHIEU Samphan's acts and omissions therefore substantially contributed to the crimes at Tuol Po Chrey.

1046. The Chamber has already found that KHIEU Samphan knew of the substantial likelihood that the crimes such as those committed at Tuol Po Chrey would be committed. The Chamber is therefore satisfied that by making public statements encouraging Khmer Rouge soldiers and cadre, he intended or was aware of a substantial likelihood of the commission of these crimes. The Chamber therefore finds that KHIEU Samphan is criminally responsible for instigating the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

16.3.3.4. *Aiding and Abetting*

1047. The Chamber is satisfied that KHIEU Samphan provided practical assistance, encouragement and moral support to the perpetrators of the crimes committed at Tuol Po Chrey. In public statements and instructional meetings before and after the commission of crimes at Tuol Po Chrey, KHIEU Samphan maintained that only the seven 'super traitors' would be executed and that other Khmer Republic officials would be spared; praised the Khmer Rouge and the army, including for their success in vanquishing the Khmer Republic regime; justified and endorsed Khmer Rouge policies, including continued vigilance against and elimination of all elements of the former Khmer Republic regime; and excused or denied crimes, including executions of Khmer Republic officials.[3078] His diplomatic efforts also won support from some in the international community and from other factions in Cambodia, including

[3076] Section 3: Historical Background, paras 133, 142, 144, 146.
[3077] Section 3: Historical Background, paras 133, 142, 144, 146.
[3078] Section 16: The Criminal Responsibility of Khieu Samphan, paras 973-976, 980-987.

NORODOM Sihanouk, whose praise of the Khmer Rouge reassured local and international observers.[3079]

1048. This practical assistance, encouragement and moral support had a substantial effect on the commission of crimes at Tuol Po Chrey. Based on his reputation, official positions, and the un-reserved support of the Khmer Rouge,[3080] the Chamber is satisfied that the perpetrators, who acted in furtherance of the CPK policy to target Khmer Republic officials for execution, arrest or disappearance, were encouraged by his public statements. His assurances that Khmer Republic officials, other than the seven 'super traitors', would be spared also lulled Khmer Republic officials into a false sense of security following liberation.[3081] Khmer Republic officials were thereafter lured away from the general population under the pretext of participating in re-education and training sessions were then executed en masse,[3082] as were the Khmer Republic officials assembled and then executed at Tuol Po Chrey.

1049. In addition, the Chamber is satisfied that the perpetrators anticipated that KHIEU Samphan would continue to provide them with assistance and encouragement after the executions perpetrated at Tuol Po Chrey. Indeed, these expectations were consistent with the fact that the policy targeting Khmer Republic officials resulting from decisions taken at the highest levels of the CPK were already in force. It was also consistent with the fact that KHIEU Samphan continuously provided support to the Khmer Rouge throughout the democratic revolution, particularly during the final offensive on Phnom Penh and in the initial days after liberation.[3083] Therefore the perpetrators must have been convinced that the executions were in accordance with the prevailing CPK policy and were certain that the CPK leaders would continue to support and assist them after the fact and in particular that KHIEU Samphan would continue to make efforts to justify the Party's policies and actions.

1050. In fact KHIEU Samphan did as expected. He knew that the crimes committed

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[3079] Section 16: The Criminal Responsibility of Khieu Samphan, paras 988-992.
[3080] Section 16: The Criminal Responsibility of Khieu Samphan, para. 976.
[3081] Section 14: Joint Criminal Enterprise, paras 817-823; Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[3082] Section 3: Historical Background, para. 120; Section 14: Joint Criminal Enterprise, paras 829-834.
[3083] Section 3: Historical Background, paras 162, 164; Section 16: The Criminal Responsibility of Khieu Samphan, para. 981.

at Tuol Po Chrey would likely be committed[3084] and that his conduct assisted or facilitated their commission. The Chamber is also satisfied that KHIEU Samphan was aware of at least the essential elements of the crimes. With this knowledge, KHIEU Samphan provided assistance, encouragement and moral support to the perpetrators of crimes prior to and after the executions were committed at Tuol Po Chrey. The Chamber is satisfied that his conduct assisted and had a substantial effect on the commission of the crimes.

1051. The Chamber therefore finds that KHIEU Samphan is criminally responsible for aiding and abetting the crimes against humanity of murder, extermination and political persecution committed at Tuol Po Chrey.

16.3.3.5. *Superior Responsibility*

1052. The crimes at Tuol Po Chrey were committed by cadres under the direct authority of the Northwest Zone Committee and Secretary ROS Nhim between approximately 24 and 26 April 1975. During the final offensive to liberate the country, the Chamber has found that Zone commanders and military leaders sought and received instructions from senior leaders based at B-5 and following their return to Phnom Penh, at latest, by 25 April 1975, at the Phnom Penh Railway Station.[3085] The perpetrators of the crimes committed during phase one were also under the direct control of Zone and Autonomous Sector military leaders who sought and received instructions from senior leaders based at B-5.[3086] The Chamber therefore finds that the perpetrators of crimes at Tuol Po Chrey were similarly situated to the perpetrators of crimes during movement of population (phase one). In turn, the Chamber adopts its reasoning provided in the sections relevant to the charge that KHIEU Samphan was responsible as a superior for the crimes committed in the course of phase one (Section 16.3.1.5). It therefore finds that KHIEU Samphan did not exercise effective control over the perpetrators of the crimes at Tuol Po Chrey. The Chamber dismisses the charge that KHIEU Samphan is responsible as a superior for the crimes committed at Tuol Po Chrey.

[3084] Section 16: The Criminal Responsibility of Khieu Samphan, paras 947-952.
[3085] Section 14: Joint Criminal Enterprise, paras 816-818. *See also*, 835-836.
[3086] Section 13: Applicable Law: Individual Criminal Responsibility, para. 715.

16.4. Conclusion

1053. The Chamber has found that, through a JCE, KHIEU Samphan committed the crimes against humanity of murder, political persecution and other inhumane acts (forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey. The Chamber has also found that the Accused planned, instigated, aided and abetted the aforementioned crimes during population movement (phases one and two) and at Tuol Po Chrey. Considering that the Accused's participation in the JCE encompasses all the conduct forming the basis of the Chamber's findings on these other forms of responsibility, the Chamber will enter a conviction for commission of these crimes only through a JCE.

1054. The Chamber also finds that KHIEU Samphan planned, instigated, aided and abetted the crimes of extermination (during movement of population (phases one and two)), political persecution (at Tuol Chrey), and other inhumane acts (comprising enforced disappearances) (during movement of population (phase two)).

17. CUMULATIVE CONVICTIONS

1055. Where the Accused's conduct fulfils the elements of different offences, the Chamber must evaluate the impact of multiple convictions. Multiple convictions serve to "describe the full culpability of a particular accused or provide a complete picture of his criminal conduct."[3087] Where a Chamber has made findings of guilt on more than one statutory crime arising out of the same acts or omissions on the part of the accused, a conviction for each crime is permissible only if it has a materially distinct element that the other crimes in question do not.[3088] If two crimes charged in respect of the same conduct do not contain at least one mutually distinct element, a Chamber may convict the accused only of the crime with the more specific element or elements.[3089] In applying the cumulative convictions test, a Chamber must compare in the abstract all the general requirements of the statutory crimes in question, as well as the elements of the charged underlying offences, to determine whether each crime as a matter of law, requires proof of an element that the others do not.[3090]

1056. The Chamber has found NUON Chea and KHIEU Samphan individually criminally responsible for murder, extermination, persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity).

1057. In relation to movement of population (phase one), the Chamber's findings on the crimes of murder and extermination are based on the same killings.[3091] Similarly, in relation to executions at Tuol Po Chrey, the Chamber's findings on the crimes of murder and extermination are based on the same killings.[3092] Both murder and extermination require death by intentional act or omission. While murder has no other elements, extermination additionally requires deaths on a massive scale.[3093] Accordingly, extermination, as the more specific offence, subsumes murder.[3094] The

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[3087] *KAING Guek Eav* Appeal Judgement, para. 330; *Kunarac* Appeal Judgement, para. 169.
[3088] *KAING Guek Eav* Appeal Judgement, paras 318, 332; *Čelebići* Appeal Judgement, para. 412.
[3089] *KAING Guek Eav* Appeal Judgement, para. 298; *Čelebići* Appeal Judgement, para. 413.
[3090] *KAING Guek Eav* Appeal Judgement, paras 325-326.
[3091] Section 10: Movement of the Population (Phase One), paras 553-562.
[3092] Section 12: Tuol Po Chrey, paras 683-684.
[3093] Section 9: Applicable Law : Crimes Against Humanity, paras 410-424.
[3094] *KAING Guek Eav* Judgement, para. 566; *KAING Guek Eav* Appeal Judgement, para. 334.

Chamber will therefore enter convictions only for extermination in relation to movement of population (phase one) and executions at Tuol Po Chrey.

1058. Further, the acts underlying the Chamber's findings on political persecution are largely based on the same conduct underlying the Chamber's findings on other crimes. In relation to movement of population (phase one), the underlying acts include extermination, forced transfer and attacks against human dignity. These underlying acts also form the basis of the Chamber's findings on the crimes of extermination and other inhumane acts (comprising forced transfer and attacks against human dignity).[3095] In relation to movement of population (phase two), the acts underlying the Chamber's findings on political persecution include forced transfer and enforced disappearance. These underlying acts also form the basis of the Chamber's findings on the crime of other inhumane acts (comprising forced transfer and enforced disappearance).[3096] Finally, in relation to Tuol Po Chrey, the acts underlying the Chamber's findings on political persecution include intentional killings on a massive scale. These underlying acts also form the basis of the Chamber's findings on the crime of extermination.[3097]

1059. The crime of persecution has at least one materially distinct element from the crimes of extermination and other inhumane acts, requiring proof of specific discriminatory intent.[3098] In turn, extermination requires killings on a massive scale,[3099] and the crime of other inhumane acts requires an act or omission causing serious bodily or mental harm or constituting a serious attack on human dignity.[3100] The crime of persecution does not require these elements.

1060. The Chamber therefore convicts the Accused of the crimes of persecution on political grounds, extermination, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), as each offence has a materially distinct element not contained in the others.

[3095] Section 10: Movement of the Population (Phase One), paras 547-574. Although the Chamber also found that there was murder, as set out above, murder is subsumed by extermination.
[3096] Section 11: Movement of the Population (Phase Two), paras 630-643, 649-657.
[3097] Section 12: Tuol Po Chrey, paras 683-685. Although the Chamber also found that there was murder, as set out above, murder is subsumed by extermination.
[3098] *KAING Guek Eav* Appeal Judgement, para. 335.
[3099] Section 9: Applicable Law : Crimes Against Humanity, para. 416.
[3100] Section 9: Applicable Law : Crimes Against Humanity, para. 437.

18. SENTENCING

18.1. Submissions

1061. The Co-Prosecutors submit that in view of the singular gravity of the crimes, the significant aggravating factors and the absence of relevant mitigating factors, the Trial Chamber should sentence NUON Chea and KHIEU Samphan to life in prison.[3101] The Co-Prosecutors argue that the background and context of the present case are identical to Case 001, in which the Accused was sentenced to life imprisonment on appeal. Comparing the two cases, the Co-Prosecutors note that although the crimes within the scope of Case 002/01 (which are limited to crimes against humanity) differ from those in Case 001, the Co-Accused in Case 002/01 were senior leaders of DK and at the core of the Party Centre, whereas the Accused person in Case 001, KAING Guek Eav, held a rank subordinate to both Co-Accused and reported to NUON Chea. Further, they argue that the scale of overall victimisation in Case 002/01 is far greater than the number of victims in Case 001. The Co-Prosecutors submit that these factors, as well as the comparative sentencing practice of the international criminal tribunals, support the imposition of a term of life imprisonment for each Accused.[3102]

1062. While NUON Chea denied any criminal responsibility,[3103] during the trial proceedings he expressed his sympathies to the victims of crimes committed during the DK period and said that he regretted that "the leadership was not of the perfect nature".[3104] He purported to accept moral responsibility for "what happened" during the DK era,[3105] but also said he had "no power" within the executive branch.[3106]

[3101] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 719-748. *See also*, T. 21 October 2013 (Co-Prosecutors' Closing Statements), p. 127; T. 30 October 2013 (Co-Prosecutors' Rebuttal Statements), pp. 39, 149.
[3102] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 744-748.
[3103] NUON Chea Closing Brief, E295/6/3, 26 September 2013, paras 12, 15, 234, 305, 318, 320, 333, 344, 359, 364, 368, 369, 412, 439, 444; T. 24 October 2013 (Accused NUON Chea Closing Statement), pp. 87, 91, 97, 100, 103; T. 31 October 2013 (Accused NUON Chea Final Statement), p. 58; T. 22 October 2013 (Victor KOPPE), pp. 7- 8.
[3104] *See e.g.* T. 29 May 2013 (NUON Chea), pp. 25-28, 55-56 ("allow me to express my respect to all the souls of the Cambodian people and to all the survivors who lost their relatives under the Democratic Kampuchea regime"); T. 30 May 2013 (NUON Chea), pp. 19-20; T. 4 June 2013 (NUON Chea), pp. 23-26.
[3105] T. 30 May 2013 (NUON Chea), pp. 79-85.

During his final statement, while blaming "traitors" for the "tragedy in the DK period" and asserting his innocence, NUON Chea apologized to the public, the victims, their families and all Cambodian people. He reiterated his acceptance of moral responsibility, which he considered was due to the CPK's lack of control.[3107]

1063. During the trial proceedings and in his final statement, KHIEU Samphan denied knowledge of and responsibility for the events which gave rise to the charges against him.[3108] He sought an acquittal and his Defence did not expressly address possible mitigating circumstances. He asserted that his actions were taken in furtherance of protecting the weak and building a strong, independent and peaceful Cambodia.[3109]

1064. The Trial Chamber has previously ruled by a majority, and affirms that the consolidated group of Civil Parties may not intervene on matters pertaining to sentencing.[3110]

18.2. Applicable law

18.2.1. *ECCC provisions and sentencing framework*

1065. Rule 98(5) of the Internal Rules provides that "[i]f the accused is found guilty, the Chamber shall sentence him or her in accordance with the Agreement, the ECCC Law and these [Internal Rules]." Article 10 of the ECCC Agreement provides that "[t]he maximum penalty for conviction for crimes falling within the jurisdiction of the Extraordinary Chambers shall be life imprisonment." Article 39 (new) of the ECCC Law provides additional guidance, as follows:

> Those who committed any crime as provided in Articles 3 new, 4, 5,

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[3106] T. 30 May 2013 (NUON Chea), pp. 16-20, 79-85.
[3107] T. 31 October 2013 (Accused NUON Chea Final Statement), pp. 2-3, 32-35.
[3108] T. 23 May 2013 (KHIEU Samphan), 16-19; T. 27 May 2013 (KHIEU Samphan), pp. 81-85; T. 29 May 2013 (KHIEU Samphan), pp. 18-26; T. 30 May 2013 (KHIEU Samphan), pp. 16-18, pp. 78-83; T. 4 June 2013 (KHIEU Samphan), pp. 23-25; T. 31 October 2013 (Accused KHIEU Samphan Final Statement), p. 73.
[3109] T. 31 October 2013 (Accused KHIEU Samphan Final Statement), p. 69.
[3110] T. 5 April 2011, pp. 99-100 (Closed Session) citing its decisions in Case 001: T. 27 August 2009, pp. 41-42; Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character, E72/3, 9 October 2009, in particular, paras 40, 42.

> 6, 7 and 8 [of the ECCC Law] shall be sentenced to a prison term from five years to life imprisonment.
>
> In addition to imprisonment, the [Trial Chamber] may order the confiscation of personal property, money, and real property acquired unlawfully or by criminal conduct.
>
> The confiscated property shall be returned to the State.[3111]

1066. The ECCC Agreement, the ECCC Law and the Internal Rules are largely silent as to principles and factors to be considered at sentencing. Therefore, the Chamber will exercise its own discretion in determining the sentence justified in the particular circumstances and in accordance with Article 33 of the ECCC Law will seek guidance from both relevant international and Cambodian sentencing principles and factors.

18.2.2. *Relevant sentencing principles and factors*

1067. In reducing crimes of considerable enormity and scope to an individualised sentence, the Chamber seeks to reassure the surviving victims, their families, the witnesses and the general public that the law is effectively implemented and enforced, and applies to all regardless of status or rank.[3112] Sentencing further serves the purposes of deterrence, both to the accused and more generally,[3113] and punishment, though not revenge.[3114] The sentence must be proportionate and individualised in order to reflect the culpability of the accused based on an objective, reasoned and measured analysis of the accused's conduct and its consequential harm.[3115] These principles are also recognized and applicable in Cambodian law.[3116]

1068. In determining the appropriate sentence, the gravity of the crime committed is the "litmus test"[3117] and requires "consideration of the particular circumstances of the case, as well as the form and degree of the participation of the [a]ccused in the

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[3111] *See also*, Article 38 of the ECCC Law (all penalties shall be limited to imprisonment) and Article 189 of the Cambodian Criminal Code (crimes against humanity are punishable by life imprisonment).
[3112] *Cf. KAING Guek Eav* Trial Judgement, para. 579; *Kordić & Čerkez* Appeal Judgement, paras 1073, 1080.
[3113] *Kordić & Čerkez* Appeal Judgement, paras 1073, 1076-1078.
[3114] *KAING Guek Eav* Trial Judgement, para. 580; *Kordić & Čerkez* Appeal Judgement, paras 1073, 1075.
[3115] *KAING Guek Eav* Trial Judgement, para. 580; *Furundžija* Appeal Judgement, para. 249.
[3116] *See* Article 96 of the Cambodian Criminal Code.
[3117] *KAING Guek Eav* Trial Judgement, para. 582, citing *Aleksovski* Appeal Judgement, para. 182.

crime."[3118] The Supreme Court Chamber has identified the following factors as being relevant to an assessment of the gravity of a crime: the number and the vulnerability of victims; the impact of the crimes upon them and their relatives; the discriminatory intent of the convicted person when it is not already an element of the crime; the scale and the brutality of the offences; and the role played by the convicted person.[3119]

1069. Moreover, the Chamber will consider all relevant aggravating and mitigating factors in determining a sentence.[3120] Aggravating factors must be proved by the Co-Prosecutors to the same standard as that required for a conviction and only circumstances directly related to the commission of the offence charged, and for which the accused has been convicted, will be considered to be aggravating. An element of the underlying offence cannot be taken into account as an aggravating factor.[3121] Further, the same fact cannot be used both to demonstrate the gravity of the crime and as an aggravating factor.[3122] Finally, the Chamber adopts the useful guidelines regarding aggravating factors set out in Rule 145(2)(b) of the ICC's Rules of Procedure and Evidence, where relevant to the instant case:

> (i) [a]ny relevant prior criminal convictions for crimes under the jurisdiction of the [ICC] or of a similar nature; (ii) abuse of power or official capacity; (iii) commission of the crime where the victim is particularly defenceless; (iv) commission of the crime with particular cruelty or where there were multiple victims; (v) commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3 [i.e., gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status]; (vi) other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.[3123]

1070. The jurisprudence of other international tribunals has established that the burden of proof on an accused with regard to mitigating factors is a lower standard

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[3118] *KAING Guek Eav* Trial Judgement, para. 582, citing *Stakić* Appeal Judgement, para. 380. *See also*, Rule 145(1)(c) of the ICC Rules of Procedure and Evidence. Similarly, Article 96 of the Cambodian Criminal Code provides that in imposing a penalty, account must be taken of the seriousness and circumstances of the offence and the character of the accused.
[3119] *KAING Guek Eav* Appeal Judgement, para. 375.
[3120] Aggravating and mitigating factors are also considered in sentencing under Cambodian law. *See e.g.* Articles 77- 82 and 93 of the Cambodian Criminal Code.
[3121] *KAING Guek Eav* Trial Judgement, para. 583; *Blaškić* Appeal Judgement, para. 693.
[3122] *KAING Guek Eav* Trial Judgement, para. 583; *Deronjić* Judgement on Sentencing Appeal, paras 106-107.
[3123] *KAING Guek Eav* Trial Judgement, para. 583, citing ICC Rules of Procedure and Evidence, Rule 145(2)(b).

than on prosecution for aggravating factors.[3124] Mitigating factors may be taken into account regardless of whether they are directly related to the alleged offence or not.[3125] Rule 145(2)(a) of the ICC's Rules of Procedure and Evidence identifies the following mitigating factors, which the Chamber again adopts:

> (i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;
>
> (ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court.[3126]

1071. The Chamber notes that, in accordance with established international jurisprudence, the decision of the Accused to remain silent at certain times during the trial was not considered an aggravating factor in determining their sentences.[3127]

18.2.3. *The effect of multiple convictions upon sentence*

1072. There are no provisions in the ECCC Agreement, the ECCC Law or the Internal Rules indicating whether the Chamber may impose a single sentence following conviction for multiple offences, where each conviction is based on distinct criminal conduct.[3128] The Chamber has previously held however, that it may impose a single sentence that reflects the totality of the criminal conduct where an accused is convicted of multiple offences.[3129]

[3124] *KAING Guek Eav* Trial Judgement, para. 584; *Blaškić* Appeal Judgement, para. 687, footnote 1466.
[3125] *KAING Guek Eav* Trial Judgement, para. 584; *Blaškić* Appeal Judgement, para. 696.
[3126] ICC Rules of Procedure and Evidence, Rule 145(2)(a).
[3127] *Blaškić* Appeal Judgement, para. 687; *Delalić et al.* Appeal Judgement, para. 783; *Limaj et al.* Trial Judgement, para. 729.
[3128] The Chamber notes that this issue differs from that of cumulative convictions, which pertains to whether an Accused person may be convicted of different crimes on the basis of the same underlying act or acts, and which has already been addressed. *See* Section 17: Cumulative Convictions, paras 1055-1060.
[3129] *KAING Guek Eav* Trial Judgement, paras 586-590.

18.3. Findings

18.3.1. *Gravity of the crimes*

18.3.1.1. *General considerations applicable to both Accused*

1073. The Co-Prosecutors contend that in evaluating the gravity of the crimes, the Chamber should consider the large number of victims, the brutal and inhumane circumstances of the offences, the lasting impact of these crimes on the Cambodian people, and the key role of both Accused in the preparation and commission of the crimes.[3130] The Chamber agrees that these factors, which also accord with the Supreme Court Chamber's guidance,[3131] are relevant to determining the gravity of the crimes.

1074. The Trial Chamber has found NUON Chea and KHIEU Samphan to be responsible for the crimes against humanity of extermination (encompassing murder), political persecution and other inhumane acts (comprising forced transfer, attacks against human dignity and enforced disappearances).

1075. The Trial Chamber has found that a minimum of 250 LON Nol officials were murdered at Tuol Po Chrey[3132] and as a minimum, between 2,330,000 to 2,430,000 people were victims of crimes committed during the first two phases of forced population movement.[3133] The number of victims is among the highest of any decided case concerning international crimes. The crimes were committed across the whole of Cambodia during an almost two-year period. The Trial Chamber considers that the gravity of the crimes is illustrated by the vast number of victims, as well as the broad geographic and temporal scope of victimisation.

1076. The Trial Chamber has found that the conditions of the forced transfer of the inhabitants of Phnom Penh and movement of population (phase two) were severe, unrelenting and inhumane. They included: extreme heat; a lack of sufficient food, clean water, medicine or adequate accommodation; the separation of families; cruel

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[3130] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 722-735.
[3131] *KAING Guek Eav* Appeal Judgement, para. 375; recalled above.
[3132] *See* Section 12: Tuol Po Chrey, para. 681.
[3133] *See* Section 10: Movement of the Population (Phase One), para. 547; Section 11: Movement of the Population (Phase Two), para. 630.

mistreatment; terror; and threats and incidents of violence.[3134] The crimes were perpetrated with cold disregard for human life and were often brutal, adding to their gravity.

1077. The gravity of the crimes is further demonstrated by their serious and lasting impact upon the victims and their relatives and Cambodia in general. For the victims who died as a result of the crimes, the consequences were absolute. Many of those who survived suffered ongoing physical trauma, as well as mental and psychological disorders.[3135] The grave impact of these crimes on the victims and their relatives is both devastating and enduring.

1078. The same fact cannot be used both to demonstrate the gravity of the crimes and as an aggravating factor.[3136] The Trial Chamber has the discretion to decide whether it is more appropriate to consider certain factors as contributing to the gravity of the crime or as aggravating factors.[3137] In the circumstances, the Trial Chamber does not take into account the vulnerability of the victims when assessing gravity, considering it more appropriately addressed as an aggravating factor.

18.3.1.2. *Role of NUON Chea*

1079. The Trial Chamber has found that NUON Chea was a key actor responsible for the formulation of Party policies.[3138] As Deputy Secretary of the Party, he exercised ultimate decision-making power with POL Pot.[3139] NUON Chea knew that the crimes would be committed and was involved in the common purpose from the time of its inception throughout the period relevant to Case 002/01: from his participation in the initial development of the above policies to his active involvement in their continuing implementation.[3140] The Chamber has found that the significance of his role is heightened in view of the limited number of people who constituted the 'upper

[3134] *See* Section 10: Movement of the Population (Phase One), paras 489-491, 546-574; Section 11: Movement of the Population (Phase Two), paras 635, 639.
[3135] *See* Section 10: Movement of the Population (Phase One), para. 552; Section 11: Movement of the Population (Phase Two), paras 639, 644; Section 19: Civil Party Reparations, paras 1141-1150.
[3136] *KAING Guek Eav* Trial Judgement, para. 583; *Deronjić* Judgement on Sentencing Appeal, paras 106-107.
[3137] *Popović et al.* Trial Judgement, para. 2138; *Vasiljević* Appeal Judgement, para. 157.
[3138] Section 7: Roles and Function – NUON Chea, paras 347-348; Section 15: The Criminal Responsibility of Nuon Chea, para. 875.
[3139] Section 7: Roles and Function – NUON Chea, para. 348.
[3140] Section 15: The Criminal Responsibility of Nuon Chea, paras 839-857, 861.

echelon'.[3141] The Chamber accordingly finds NUON Chea's involvement in the crimes to be pivotal, extensive and significant.

18.3.1.3. *Role of KHIEU Samphan*

1080. The Trial Chamber has found that KHIEU Samphan was a key actor responsible for the formulation of the Party policies that are the subject of Case 002/01. Throughout the period relevant to Case 002/01, he also disseminated, endorsed and defended the common purpose and policies, providing encouragement, support and his trusted and respected character which allowed the crimes to be more readily be committed.[3142] KHIEU Samphan knew that the crimes would be committed and was involved in the common purpose from the time of its inception throughout the period relevant to Case 002/01. Meanwhile, he implemented key economic aspects of the common purpose which were intended to ensure the evolution of Cambodia into a modern agricultural and thereafter industrial state, while disregarding the human cost of their implementation.[3143] The Chamber accordingly finds KHIEU Samphan's involvement in the crimes to be extensive and substantial.

18.3.2. ***Aggravating factors***

18.3.2.1. *General considerations applicable to both Accused*

1081. The Co-Prosecutors submit that the following factors should aggravate the sentence of the Accused: the "absolute" abuse of power and official capacity by each Accused; the particular defencelessness and large number of the victims; and the cruelty and zeal with which the crimes were committed.[3144]

1082. Many vulnerable individuals – including children, the elderly, sick and injured people evacuated from hospitals, pregnant women and those who had recently given birth – were subject to crimes during the two phases of population movement.[3145] Further, those subjected to forced transfer were rendered helpless, in significant part

[3141] Section 7: Roles and Function – NUON Chea, paras 347-348; Section 15: The Criminal Responsibility of Nuon Chea, para. 875.
[3142] Section 16: The Criminal Responsibility of Khieu Samphan, paras 980-987.
[3143] Section 16: The Criminal Responsibility of Khieu Samphan, para. 979.
[3144] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 736-739.
[3145] *See* Section 10: Movement of the Population (Phase One), paras 546-574; Section 11: Movement of the Population (Phase Two), para. 647.

through the Khmer Rouge's own actions: victims were weak, tired, injured and ill as a result of inadequate food, accommodation, assistance or hygiene facilities.[3146] The Trial Chamber considers the fact that the crimes were committed against vulnerable and defenceless individuals is an aggravating circumstance.

1083. As the number of victims has been taken into account in assessing the gravity of the crimes,[3147] the Trial Chamber declines to consider this as an aggravating factor as the Co-Prosecutors have proposed.

18.3.2.2. *Considerations applicable to NUON Chea*

1084. The Trial Chamber has found NUON Chea responsible for the crimes against humanity of extermination (encompassing murder), political persecution and other inhumane acts (comprising forced transfer, attacks against human dignity and enforced disappearances). NUON Chea's contribution to the crimes, including through his participation in the JCE, was undertaken in his official capacities, including as Deputy Secretary of the CPK throughout the DK period and a full rights member of both the CPK Central and Standing Committees. This constitutes an abuse of his position of authority and influence[3148] and thus aggravates his culpability.

1085. While NUON Chea was dedicated in carrying out his role, the Co-Prosecutors have failed to establish that he displayed any particular zeal or enthusiasm with regard to his criminal activity. Accordingly, the Trial Chamber does not consider that zeal has been proven as an aggravating factor.

1086. The Trial Chamber finds that NUON Chea is also a well-educated individual who well understood the import and consequences of his actions.[3149] The Trial Chamber finds that this constitutes an aggravating factor.

[3146] *See* Section 10: Movement of the Population (Phase One), paras 546-574; Section 11: Movement of the Population (Phase Two), para. 627-648.
[3147] *KAING Guek Eav* Trial Judgement, para. 583; *Deronjić* Judgement on Sentencing Appeal, paras 106-107.
[3148] *Šainović et al.* Appeal Judgement, para. 1802; *Stanišić and Župljanin* Trial Judgement, paras 929, 948.
[3149] *See* Section 7: Roles and Functions – Nuon Chea, para. 305.

18.3.2.3. *Considerations applicable to KHIEU Samphan*

1087. The Trial Chamber has found KHIEU Samphan responsible for the crimes against humanity of extermination (encompassing murder), political persecution and other inhumane acts (comprising forced transfer, attacks against human dignity and enforced disappearances). KHIEU Samphan's contribution to the crimes, including through his participation in the JCE, was undertaken in his official capacities, including as a member of the Central Committee, a member of Office 870, President of the State Presidium, and highest official in GRUNK. This constitutes an abuse of his position of authority and influence[3150] and thus aggravates his culpability.

1088. Willingness in the sense of voluntariness is a necessary component of the crimes and therefore not an aggravating factor.[3151] While the evidence demonstrates that KHIEU Samphan consciously and voluntarily carried out his role, the Co-Prosecutors have failed to establish that he displayed any particular zeal or enthusiasm with regard to his criminal activity. Accordingly, the Trial Chamber does not consider that zeal has been established as an aggravating factor.

1089. The Trial Chamber finds that KHIEU Samphan is a well-educated individual.[3152] He studied both law and economics successfully at the tertiary level and was therefore well equipped to know the import and consequences of his actions. The Trial Chamber finds that these facts constitute an aggravating factor.

18.3.3. ***Mitigating factors***

18.3.3.1. *General considerations applicable to both Accused*

1090. The Co-Prosecutors submit that "no relevant mitigating factors" exist to reduce the sentence of either Accused in this case, since there is no evidence of diminished mental capacity or duress, they have not shown remorse for their crimes or substantially cooperated with the ECCC.[3153] While the Accused have not made any direct submissions in relation to mitigating circumstances, the Trial Chamber has the

[3150] *Šainović et al.* Appeal Judgement, para. 1802; *Stanišić and Župljanin* Trial Judgement, paras 929, 948.
[3151] *Popović et al.* Trial Judgement, para. 2154.
[3152] *See* Section 8: Roles and Functions – Khieu Samphan, paras 351-355.
[3153] Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013, paras 740-743.

discretion to consider any factors that it considers to be of a mitigating nature.[3154]

1091. The Trial Chamber agrees with the Co-Prosecutors' submission that there is no evidence of diminished mental capacity or duress.

18.3.3.2. *Considerations applicable to NUON Chea*

1092. During the trial proceedings, NUON Chea expressed his regret that the DK leadership was not of the "perfect nature",[3155] but asserted that he had no power whatsoever with respect to the executive branch of government.[3156] NUON Chea stated that the DK had a "good purpose" for the nation and "every one of us" "sacrificed ourselves for our nation".[3157] He characterised those who lost their lives during the period as "national compatriots who sacrificed their lives".[3158] In his final statement, NUON Chea stated that, "Although the tragedy in the DK period was the result of the acts committed by those traitors in the name of Deputy Secretary of the Party that had the responsibility to disseminate and propagandize education about the CPK policy, I would like to sincerely apologize to the public, to the victims, their families, and all Cambodian people".[3159] NUON Chea further stated that he accepted moral responsibility for the CPK's lack of control.[3160]

1093. In order to be a factor in mitigation, expressions of remorse must be real and sincere.[3161] An accused can express sincere regrets without admitting his participation in the crimes, remorse requires acceptance of some moral responsibility for personal wrongdoing.[3162] The Chamber finds that the mitigating impact of NUON Chea's apology is undermined by his failure to accept responsibility for his own wrongdoing. Instead he apologized for the acts of "traitors" and limited his own responsibility to the CPK's lack of control over these supposed and unspecified traitors.

[3154] *Simić et al.* Trial Judgement, para. 1066; *Krstić* Trial Judgement, para. 713; *Taylor* Appeal Judgement, para. 675.
[3155] T. 29 May 2013 (NUON Chea), pp. 25-28.
[3156] T. 30 May 2013 (NUON Chea), pp. 16-20.
[3157] T. 29 May 2013 (NUON Chea), pp. 55-56.
[3158] T. 29 May 2013 (NUON Chea), pp. 55-56.
[3159] T. 31 October 2013 (Accused NUON Chea Closing Statements), p. 33-35.
[3160] T. 31 October 2013 (Accused NUON Chea Closing Statements), p. 33-34. *See also*, T. 30 May 2013 (NUON Chea), pp. 79-85.
[3161] *Blaškić* Appeal Judgement, para. 705.
[3162] *Strugar* Appeal Judgement, paras 366-367.

1094. The Trial Chamber has considered the quantity and quality of information provided by NUON Chea to the ECCC. NUON Chea made several statements relevant to his roles and functions during the DK period. Initially he cooperated with the Chamber, answering questions concerning the historical background of the CPK, during which confirmed his long and close association with the CPK, his role as Deputy Secretary, his membership in the Central and Standing Committees and his appointment as Chairman of the People's Representative Assembly.[3163] However, his cooperation was short lived, and given its modest nature, the Chamber accords it limited weight as a mitigating factor.

1095. The Chamber acknowledges that advanced age can be considered as a mitigating factor[3164] and accords it some minimal weight here. Noting that ill-health will only be considered mitigating in exceptional circumstances,[3165] and in view of the Chamber's assessment of the health of the Accused,[3166] the Chamber declines to consider ill-health as a mitigating factor in the circumstances of this case.

18.3.3.3. *Considerations applicable to KHIEU Samphan*

1096. During the trial proceedings and in his final statement, KHIEU Samphan denied knowledge of and responsibility for events which "could have happened" following the Khmer Rouge victory and stated that, in any case, he did not have the power to intervene.[3167] KHIEU Samphan apologized for not being aware of the suffering during the DK period.[3168] The Chamber finds that KHIEU Samphan has accepted no responsibility for the crimes committed, and nor has he expressed remorse for them. Accordingly, remorse cannot be considered as a mitigating factor.

1097. The Trial Chamber's review of KHIEU Samphan's participation in the proceedings reveals limited cooperation with the ECCC. During the trial proceedings,

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[3163] *See* Section 7: Roles and Functions – Nuon Chea, paras 305-311, 313-314, 319-320, 347-348.
[3164] *Đorđević* Appeal Judgement, paras 974, 980.
[3165] *Simić* Sentencing Judgement, paras 97-98; *Kordić and Čerkez* Trial Judgement, para. 848.
[3166] Decision on Fitness of the Accused NUON Chea to Stand Trial, E301/11, 25 April 2014.
[3167] T. 23 May 2013 (KHIEU Samphan), 16-19; T. 27 May 2013 (KHIEU Samphan), pp. 81-85; T. 29 May 2013 (KHIEU Samphan), pp. 18-26; T. 30 May 2013 (KHIEU Samphan), pp. 16-18; T. 30 May 2013 (KHIEU Samphan), pp. 78-83; T. 4 June 2013 (KHIEU Samphan), pp. 23-25; T. 31 October 2013 (Accused KHIEU Samphan Final Statement), pp. 70-71, 73; Section 8 Roles and Functions – KHIEU Samphan, para. 388.
[3168] T. 30 May 2013 (KHIEU Samphan), pp. 16-18.

KHIEU Samphan answered questions regarding his identity, personal background and certain documents on the Case File. He also answered a number of questions put to him by Civil Parties,[3169] which may have some impact in facilitating reconciliation. In view of the very limited nature of this cooperation, the Chamber accords it little weight as a mitigating factor.

1098. The Chamber acknowledges that advanced age can be considered as a mitigating factor[3170] and accords it some minimal weight here. Noting that ill-health will only be considered mitigating in exceptional circumstances,[3171] and in view of the Chamber's assessment of the health of the Accused,[3172] the Chamber declines to consider ill-health as a mitigating factor in the circumstances of this case.

18.3.4. ***Character witnesses***

1099. Five witnesses testified to the character of KHIEU Samphan.[3173] The witnesses asserted that KHIEU Samphan was and continues to be popular in Cambodia,[3174] and has a reputation for being respectful,[3175] honest,[3176] and for desiring social justice and welfare for the Cambodian people.[3177] Two witnesses testified that KHIEU Samphan treats people equally and does not discriminate.[3178] Several witnesses stated that KHIEU Samphan is not a violent or cruel man.[3179]

[3169] *See* Section 8: Roles and Functions – Khieu Samphan, para. 350.
[3170] *Đorđević* Appeal Judgement, paras 974, 980.
[3171] *Simić* Sentencing Judgement, paras 97-98; *Kordić and Čerkez* Trial Judgement, para. 848.
[3172] Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E301/12, 25 April 2014.
[3173] Namely, Philippe JULLIAN-GAUFRES, CHAU Sockon, TUN Soeun, SOK Roeu and SO Socheat.
[3174] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), p. 80; Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 5; T. 22 May 2013 (CHAU Sockon), pp. 69, 72; T. 10 June 2013 (TUN Soeun), pp. 13-14.
[3175] T. 22 May 2013 (CHAU Sockon), p. 68.
[3176] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), p. 80; Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 5; T. 10 June 2013 (TUN Soeun), pp. 13-14; T. 10 June 2013 (SO Socheat), p. 80.
[3177] T. 22 May 2013 (CHAU Sockon), pp. 67, 69; T. 21 May 2013 (Philippe JULLIAN-GAUFRES), p. 80.
[3178] T. 10 June 2013 (TUN Soeun), pp. 15-16; T. 10 June 2013 (SO Socheat), p. 80.
[3179] Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 7; T. 22 May 2013 (CHAU Sockon), p. 73; T. 10 June 2013, pp. 14-16 (TUN Soeun). The Trial Chamber notes that one of these witnesses was CHAU Sockon, who has only met KHIEU Samphan four times: T. 22 May 2013 (CHAU Sockon), pp. 76-77.

1100. Philippe JULLIAN-GAUFRES, first met KHIEU Samphan at university in France in the 1950s, then several times between 1961 and 1966 in Cambodia,[3180] and later in the 1990s and 2000s in Cambodia, China and France.[3181] He had conversations with the Accused,[3182] during which he was informed that KHIEU Samphan's main goal was to improve the livelihood of the Cambodian population through economic revolution,[3183] and that he wanted Cambodia to develop slowly and without brutality.[3184] SOK Roeu, KHIEU Samphan's bodyguard from 1989 to 1995,[3185] testified that KHIEU Samphan guided his subordinates rather than ordering them, never looked down on poor people or peasants and that he never saw anyone become upset with KHIEU Samphan.[3186]

1101. Various witnesses testified as to KHIEU Samphan's character and actions before and after the DK era. Philippe JULLIAN-GAUFRES stated that KHIEU Samphan devoted time to assisting Khmer students arriving in Paris in the 1950s,[3187] he tried to protect Cambodian peasants from abusive traders in the 1960s,[3188] and he stood up to military authorities illegally forcing peasants in his district to do unwarranted work.[3189] KHIEU Samphan's son-in-law, TUN Soeun, who lived with the Accused from 1988 or 1989 until 1994,[3190] testified that KHIEU Samphan has built a good rapport with his neighbours and is liked by all.[3191]

1102. KHIEU Samphan's wife, SO Socheat, testified as to her husband's character and conduct before, during and after the DK period. She described KHIEU Samphan as an intellectual and educated person,[3192] who is very gentle, kind and patient.[3193] She

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[3180] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), pp. 62-70; Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, pp. 2-3.
[3181] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), pp. 73-74.
[3182] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), pp. 68-69.
[3183] T. 21 May 2013 Philippe JULLIAN-GAUFRES), p. 77.
[3184] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), p. 76; Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 3.
[3185] T. 7 June 2013 (SOK Roeu), pp. 78-79.
[3186] T. 7 June 2013 (SOK Roeu), pp. 81, 86.
[3187] Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 4.
[3188] T. 21 May 2013 (Philippe JULLIAN-GAUFRES), p. 69.
[3189] Attachment 4: Testimony of Philippe JULLIAN-GAUFRES in Defence of Mr. KHIEU Samphan, E190/2.5, 15 October 2010, p. 4.
[3190] T. 10 June 2013 (TUN Soeun), p. 15.
[3191] T. 10 June 2013 (TUN Soeun), pp. 15-16.
[3192] T. 10 June 2013 (SO Socheat), pp. 56-57.

stated that his character is not that of a cruel person or a murderer,[3194] and he is not the kind of person to perform degrading acts or to be avaricious for rank or promotion,[3195] but is a "man of virtue, of high morality", who has never upset her and is very faithful.[3196]

1103. The Chamber accepts that KHIEU Samphan may have treated his wife well and been kind to people in specific instances. However, these factors cannot play any significant part in mitigating crimes of the severity of those for which KHIEU Samphan has been found guilty, and will not be given undue weight. The Trial Chamber therefore gives limited weight to KHIEU Samphan's purported good character as a mitigating factor in sentencing.

1104. No character witnesses were heard by the Trial Chamber in respect of NUON Chea.[3197]

18.3.5. ***Sentence***

18.3.5.1. *Imprisonment*

1105. In deciding on appropriate sentences for NUON Chea and KHIEU Samphan, the Chamber has taken into account the entirety of the circumstances of this case, including all relevant sentencing principles and factors discussed above. The Chamber has also noted that the Supreme Court Chamber in the *KAING Guek Eav* Appeal Judgement, held by super-majority that the Trial Chamber in that case had "imposed a [finite] sentence that does not reflect the gravity of the crimes committed,"[3198] and imposed a sentence of life imprisonment. While the Chamber has found that NUON Chea's criminal responsibility exceeds that of KHIEU Samphan, a sentence of life imprisonment is nonetheless appropriate for each Accused. The Chamber notes however that there are factors which reveal far greater culpability on the part of the two Accused than KAING Guek Eav's culpability in Case 001, such as the vastly

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[3193] T. 10 June 2013 (SO Socheat), pp. 56-57, 61-62, 80.
[3194] T. 10 June 2013 (SO Socheat), pp. 80-81.
[3195] T. 10 June 2013 (SO Socheat), pp. 80-81.
[3196] T. 10 June 2013 (SO Socheat), pp. 80-81.
[3197] Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, paras 106-111.
[3198] *KAING Guek Eav* Appeal Judgement, para. 373.

greater number of victims, and the number and gravity of the crimes for which each has been convicted. The precedent settled by the Supreme Court Chamber does not allow the Chamber either to reflect these distinctions between the Accused and Kaing Guek Eav, or to distinguish in sentence between the two Accused. For all these reasons, the Chamber finds that a sentence of life imprisonment most appropriately sanctions the criminal conduct of each of the Accused.

1106. On the basis of the foregoing, the Trial Chamber decides to impose a sentence of **LIFE IMPRISONMENT** on NUON Chea.

1107. On the basis of the foregoing, the Trial Chamber decides to impose a sentence of **LIFE IMPRISONMENT** on KHIEU Samphan.

18.3.5.2. *Confiscation of personal property, money and real property*

1108. The Chamber has identified no personal property, money or real property acquired unlawfully or by criminal conduct by either NUON Chea or KHIEU Samphan.[3199] Accordingly, there are no identified assets which could form the subject of confiscation pursuant to Article 39 (new) of the ECCC Law.

[3199] KHIEU Samphan: Determination of indigence, A151, 30 January 2008; Nuon Chea: Determination of means, A49, 17 October 2007.

19. CIVIL PARTY REPARATIONS

19.1. Introduction

1109. Internal Rule 23(1) provides "The purpose of Civil Party action before the ECCC is to:

> a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and
>
> b) Seek collective and moral reparations, […]".

Taking into account difficulties experienced in Case 001 and the need to improve efficiency in trial management, the ECCC Internal Rules were amended prior to the trial phase of Case 002.[3200] The amendments streamlined and consolidated Civil Party participation at trial. They were designed to meet the requirements of trials of mass crimes and to ensure that ECCC proceedings responded more fully to the needs of victims.

1110. First, significant amendments were made to the manner in which victims participate at trial. Civil Parties now participate as individuals only at the pre-trial stage, while at the trial stage and beyond they comprise a single, consolidated group, whose interests are represented by one Cambodian and one international Civil Party Lead Co-Lawyer supported by the Civil Party Lawyers.[3201] In Case 001, the Trial Chamber had to decide on both the substance and admissibility of Civil Party claims. Following the rules change admissibility is decided finally at the pre-trial stage.[3202] The Chamber now decides only on the substance of the Civil Parties' consolidated claim for reparations.[3203]

1111. The Co-Investigating Judges determined that 2,123 Civil Party applications were admissible in Case 002.[3204] Following resolution of the final expedited appeals

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[3200] *See* Internal Rules 23, 23*bis*, 23*ter*, 23*quater*, and 23*quinquies*.
[3201] *See e.g.* Internal Rules 12*ter*, 23(3), 23*bis*, 23*ter* and 23*quinquies*.
[3202] *See* ECCC Internal Rules (12 June 2007), Internal Rule 100 ; Internal Rules *77bis*, 100 (Rev. 8); *KAING Guek Eav* Trial Judgement, para. 639.
[3203] Internal Rule 100 provides that "[t]he Chamber shall make a decision on the Civil Party claim in the judgment". Internal Rule 23*quinquies*, entitled "Civil Party Claim", specifies the bases on which the Chamber may award reparations.
[3204] In order to participate in proceedings as a Civil Party, individuals who claim to be victims of crimes included in the charges against the Accused, are required to file an application before the Co-

by the Pre-Trial Chamber on 24 June and 1 July 2011, a total of 3,869 Civil Parties were admitted in the present case and comprised the consolidated group of Civil Parties at trial.[3205]

1112. The Internal Rules were further amended to expand the range of reparations before the ECCC. An award of Civil Party reparations may still be borne by the convicted persons,[3206] but must meet stringent pleading and admissibility requirements which are frequently difficult for Civil Parties to satisfy.[3207] As evidenced by Case 001, where convicted persons are indigent, reparations awarded under the classic Civil Party model are unlikely to yield significant tangible results for Civil Parties.[3208]

1113. Amendments to the Internal Rules sought to address these limitations by creating an additional reparations avenue to the traditional Civil Party claim.[3209] This alternative permits the Civil Party Lead Co-Lawyers to request the Trial Chamber to recognize that specific reparations measures, designed or identified in coordination with the Victims Support Section, are appropriate for implementation using external resources. Over the course of the trial in Case 002, this enabled the Victims Support

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Investigating Judges who decide on their admissibility. These decisions are subject to a right of expedited appeal to the Pre-Trial Chamber. *See* Internal Rules 23(3), 77*bis*.

[3205] Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications, D404/2/4, 24 June 2011; Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications, D411/3/6, 24 June 2011; Decision on the reconsideration of the admissibility of civil party Applications, D250/3/2/1/8, 1 July 2011; Decision on the reconsideration of the admissibility of civil party applications, D364/1/6, 1 July 2011; *See also*, Separate and partially dissenting opinion of Judge Catherine MARCHI-UHEL, Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications, D411/3/6, 24 June 2011; Separate and partially dissenting opinion of Judge Catherine MARCHI-UHEL, Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications, D404/2/4, 24 June 2011; Dissenting Opinion of Judge Marchi-UHEL, Decision on the reconsideration of the admissibility of civil party applications, D250/3/2/1/8, 1 July 2011; Dissenting Opinion of Judge Marchi-UHEL, Decision on the reconsideration of the admissibility of civil party applications, D364/1/6, 1 July 2011.

[3206] *See* Initial specification of the substance of reparations awards sought by the Civil Party Lead Co-Lawyers pursuant to Internal Rule 23*quinquies* (TC), E125, 23 September 2011.

[3207] Reparations sought under this category may be awarded exclusively against convicted persons. A prerequisite to the grant of an award is the clear specification of the nature of the relief, its link to the harm caused by the Accused that it seeks to remedy, and the quantum of indemnity or amount of reparation sought from the Accused to give effect to it. *See* Internal Rule 23*quinquies*.

[3208] *See e.g. KAING Guek Eav* Trial Judgement, paras 666 (indicating that awards under the traditional Civil Party claim are directed against and borne exclusively by the Accused and that the ECCC lacks the competence to enforce reparations awards. These can therefore only be enforced, where necessary, within the ordinary Cambodian court system) and 667-675 (rejecting the majority of awards sought as being outside the scope of the ECCC's legal framework).

[3209] Internal Rule 23*quinquies*(3)(b).

Section and Lead Co-Lawyers to seek funding for reparations from donor contributions and to develop these projects in collaboration with governmental and non-governmental organizations external to the ECCC.

19.2. Legal Framework

1114. Internal Rule 23*quinquies*(1) provides that in the event an Accused is convicted, the Chamber may award only collective and moral reparations to Civil Parties. Collective and moral reparations for the purpose of these Rules are measures that:

a) acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and
b) provide benefits to the Civil Parties which address this harm.[3210]

1115. Internal Rule 23*quinquies*(1) expressly states that these benefits shall not take the form of monetary payments to Civil Parties. The Supreme Court Chamber has interpreted the term "moral" to mean repairing moral damages rather than material ones, and "collective" as confirming the unavailability of individual financial awards.[3211]

1116. The redress available before the ECCC differs from that available under a number of international treaties and other instruments, or before certain regional human rights courts, which are instead empowered to adjudicate questions of State responsibility and to order States to make reparation to their citizens where found responsible for gross violations of international human rights law. The Chamber has no jurisdiction to order the implementation or the payment of reparation measures against Cambodian or other national authorities or international bodies. Nor can it properly impose obligations on persons or entities that were not parties to the proceedings before it.[3212] However, the adoption of Internal Rule 23*quinquies*(3)(b) has enabled the Chamber to recognize that specific projects give appropriate effect to

[3210] Internal Rule 23*quinquies*(1). Civil Parties are victims who have volunteered to participate in the proceedings. Because they form a consolidated group at the trial stage, the moral and collective reparations sought on their behalf may not only address the harm suffered by this limited group, but also collaterally benefit a large number of unrepresented victims who have suffered harm as a result of the commission of the crimes for which the Accused are convicted.
[3211] *KAING Guek Eav* Appeal Judgement, para. 658.
[3212] *KAING Guek Eav* Trial Judgement, paras 662-663.

an award sought on the behalf of the consolidated group of Civil Parties to contribute to their rehabilitation, reintegration and restoration of dignity where national or international authorities, non-governmental organisations or other potential donors, provide financial support and other forms of assistance to show solidarity with the victims of Khmer Rouge era crimes.

1117. Internal Rule 23*quinquies*(2) sets out the pleading requirements of the single claim, and requires that

> [r]eparations shall be requested in a single submission, which may seek a limited number of awards. This submission shall provide:
>
> a) a description of the awards sought;
>
> b) reasoned argument as to how they address the harm suffered and specify, where applicable, the Civil Party group within the consolidated group to which they pertain; and
>
> c) in relation to each award, the single, specific mode of implementation described in Rule 23*quinquies*(3)(a)-(b) sought.

1118. The obligation on the Lead Co-Lawyers to indicate, in relation to each award, which specific mode of implementation is sought reflects the differing requirements of the alternatives embodied in Internal Rule 23*quinquies*(3)(a) and (b).[3213] It also reflects that the two avenues of reparations before the ECCC are not only distinct but also mutually exclusive and that the Lead Co-Lawyers shall necessarily select one or the other.

1119. In creating alternative avenues of reparation before the ECCC, the Internal Rules provides that "[i]n deciding the modes of implementation of the awards, the Chamber may, in respect of each award, *either*:

> a) order that the costs of the award shall be borne by the convicted person; *or*
>
> b) recognise that a specific project appropriately gives effect to the award sought by the Lead Co-Lawyers and may be implemented. Such project shall have been designed or identified in cooperation with the Victims Support Section and have secured

[3213] Under the ECCC legal framework, all reparations must "acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and provide benefits to the Civil Parties which address this harm" and may only be awarded following conviction of one or more Accused (Internal Rules 23*quinquies*(1) and 100).

sufficient external funding."[3214]

1120. The Trial Chamber has previously noted that the formulation of reparations claims made on behalf of the consolidated group of Civil Parties by the Lead Co-Lawyers should take account of Internal Rule 23*quinquies*(1)(a). When issuing its Severance decision however, the Trial Chamber expressly stated that the severance of charges will place no limitation on the ability of individual members of the consolidated group to benefit from any reparations ultimately endorsed or awarded by the Trial Chamber under Internal Rule 23*quinquies*(3)(b).[3215] The Chamber has also provided guidance to the Lead Co-Lawyers to assist their efforts in formulating requests that may result in meaningful measures in reparation and encompass the entire consolidated group of Civil Parties. In particular, it has indicated that the severance of proceedings has no impact in relation to the new and separate reparations avenue created by Internal Rule 23*quinquies*(3)(b), pursuant to which the initiatives proposed as possible measures do not result in enforceable claims against an Accused, and may be developed in parallel with the trial.[3216]

1121. Given the anticipated duration of the ECCC, over the course of the trial the Trial Chamber has exercised its powers under Internal Rule 80*bis*(4) to request the Lead Co-Lawyers to provide early indications of the types of reparations measures contemplated pursuant to Internal Rule 23*quinquies*(3)(b), and updates on the status of the financing of these projects. This was considered necessary to ensure that all measures sought on such grounds are able to be realized, with the support of donor assistance and external collaborators, and within a meaningful time-frame.[3217] In view of limited donor funds and finite human resources in both the Lead Co-Lawyers' and Victims Support Sections, the Chamber also urged the Lead Co-Lawyers to "prioritize for development a small number of reparations awards out of the totality [initially]

[3214] Internal Rule 23*quinquies*(3) (emphasis added).
[3215] Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 158.
[3216] Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, para. 158.
[3217] Internal Rule 80*bis*(4) provides that "[t]he Trial Chamber may direct the Lead Co-Lawyers, within a deadline determined by the Chamber, to provide initial specification of the substance of the awards they intend to seek within the final claim for collective and moral reparation pursuant to Rule 23*quinquies* (3)(b). At a later stage, the Chamber will determine the date by which the Lead Co-Lawyers shall file the final claim for collective and moral reparation"; *see also*, Indication of Priority Projects for Implementation as Reparation (TC), E218/7, 4 December 2012.

contemplated pursuant to [sub-Rule 23 *quinquies* (3)(b)], and commence preparation for their implementation as soon as possible."[3218]

1122. In response to the Lead Co-Lawyers' initial specifications on reparation projects, the Trial Chamber provided indications as to whether it considered these projects appropriately gave effect to the award sought by the Lead Co-Lawyers and might be implemented.[3219] It observed that in principle, the measures proposed by the Lead Co-Lawyers appropriately acknowledged the harm suffered by Civil Parties as a result of the commission of the crimes at issue in Case 002/01 and provided benefits to the Civil Parties that address this harm, and that it would endorse them provided that additional information in relation to some of these projects was furnished by 23 August 2013. However, it emphasized that the Chamber may only endorse reparations measures under Internal Rule 23*quinquies*(3)(b) where sufficient funding (i.e. full rather than partial) has been secured and where proof of the consent and co-operation of any involved third party has been demonstrated.[3220]

19.3. Civil Party Requests

1123. Following the Chamber's requests for further particularization of the awards they intend to seek, over the course of the trial the Civil Party Lead Co-Lawyers progressively updated and elaborated a number of specific projects proposed as reparation in Case 002/01.[3221] In their final request for reparations, the Lead Co-Lawyers clearly recognize that the two possible modes of implementation of the awards foreseen by Internal Rule 23*quinquies*(3)(a) and (b) are not only distinct but also mutually exclusive, and therefore that an award cannot be sought under both

[3218] Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of further measures designed to promote trial efficiency (TC), E218, 3 August 2012, para. 19.
[3219] Trial Chamber's Response to the Lead Co-Lawyers' Initial Specification of Civil Party Priority Projects as Reparations pursuant to Rule 80*bis*(4) (E218/7/1), E218/7/2, 1 August 2013, para. 2.
[3220] Trial Chamber's Response to the Lead Co-Lawyers' Initial Specification of Civil Party Priority Projects as Reparations pursuant to Rule 80*bis*(4) (E218/7/1), E218/7/2, 1 August 2013, para. 6; *see also*, Trial Chamber's Subsequent and Final Order on the Updated Specifications of the Civil Party Priority Projects as Reparations pursuant to Rule 81*bis*(4) (E218/7/3), E218/7/4, 11 September 2013, para. 3 (requesting additional information, such as sketches and/or pictures and budget plans of proposals).
[3221] For further detail see Annex 1: Procedural History.

procedural avenues simultaneously.[3222] However, in contradiction to this, the Lead Co-Lawyers appear to pursue both modes. First, they request the Chamber to couple the principle that the cost of reparations be borne by the Accused with an order that costs be externally funded by third parties.[3223] In the alternative, pursuant to Internal Rule 23*quinquies*(3)(b) they request that the Chamber both recognize that the proposed projects appropriately give effect to the award sought and acknowledge that these may be funded by third-parties.[3224]

1124. The Chamber notes that the Accused in Case 002 have been found to be indigent[3225] and that at the trial stage the Lead Co-Lawyers have neither challenged this determination, nor provided any information which would cast doubt upon the Accused's inability to effectively support the cost of reparations. The Chamber also notes that all the reparation projects presented in the final claim imply either decisions from governmental authorities and third parties' participation or external funding, which can be achieved only through Internal Rule 23*quinquies*(3)(b). Therefore, the Trial Chamber finds that the Lead Co-Lawyers' main requests based simultaneously on both reparation avenues foreseen in Internal Rule 23*quinquies*(3)(a) and (b), are not legally permissible and are inconsistent with their own acknowledgement that these avenues are not only distinct but also mutually exclusive. In addition it finds that, in any case, the request to order that the cost of reparations be borne by the Accused is inconsistent with both the failure to challenge at trial the previous determination of the Accused's indigence and with the nature of most of the reparations sought. It thus denies this joint request and will only consider the Lead

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[3222] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 27.

[3223] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 238.

[3224] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 238 and request for relief.

[3225] *See* Khieu Samphan: Determination of indigence, A151, 20 January 2008; Nuon Chea: Determination of means, A49, 17 October 2007. The Co-Investigating Judges and the Pre-Trial Chamber have both denied Civil Parties' requests to undertake investigative action concerning properties owned by the Charged Persons including measures to preserve such properties for the purpose of reparations. *See* Order on Civil Parties' Request for Investigative Actions Concerning All Properties, D193/4, 1 March 2010; Decision on Appeal of Co-Lawyers for Civil Parties Against Order on Civil Parties' Request for Investigative Actions Concerning All Properties Owned by the Charged Person, D193/5/5, 4 August 2010; Section 18: Sentencing, para. 1108.

Co-Lawyers' alternative request and evaluate whether the reparations projects fulfil the requirements of Internal Rule 23*quinquies*(3)(b).

1125. The Lead Co-Lawyers request the Chamber to judicially recognize thirteen projects as appropriate reparations. These were set forth initially in their final request for reparation on 8 October 2013 and subsequently updated with information on 2 December 2013 and 31 March 2014.[3226] Each of the requested projects is discussed below.

19.3.1. ***Project 1: National Remembrance Day***

1126. The Lead Co-Lawyers seek the establishment of an official, government-recognized National Remembrance Day, honouring victims of the Democratic Kampuchea era, both living and deceased, and acknowledging the crimes of the Khmer Rouge regime. They submit that the establishment of a National Remembrance Day would provide official and permanent recognition of Civil Party suffering and promote collective remembrance of the crimes committed during the Democratic Kampuchea period. This initiative would also assist in restoring dignity and in addressing the psychological harm suffered by victims of the Khmer Rouge as the result of the crimes adjudicated in Case 002.[3227] The Royal Government of Cambodia has agreed to declare 20 May as a public holiday for this purpose and the Lead Co-Lawyers have provided a letter from the Council of Ministers as proof of governmental support for this initiative. No funding is required to give effect to this award.[3228]

[3226] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013; *Complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexe confidentielle*, E218/7/6/1, 2 December 2013; Request for clarification on Reparations Projects (TC), E218/7/7, 19 December 2013; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014.

[3227] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 82-90; ANNEX 1 Supporting Documents for Project 1: National Day of Remembrance, E218/7/6.1.1, 8 October 2013.

[3228] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 89.

19.3.2. *Project 2: Public Memorials Initiative*

1127. The second project seeks to establish approximately five public memorial sites distributed throughout Cambodia. These sites would be selected to ensure that the sites are accessible, sustainable and utilize existing resources and capacities. The memorials would contain educational features to promote public understanding of the Khmer Rouge regime. The envisaged duration of this project is 36 months.[3229] The organizations Kdei Karuna and Youth for Peace would serve as implementing partners for this project, with the Cambodian Human Rights and Development Association (ADHOC) serving in an advisory capacity. The Lead Co-Lawyers state that this project enjoys the full support of both the Royal Government of Cambodia and the above-mentioned implementing non-governmental organisations.[3230] Although acknowledging that funding for this project has not been secured, the Lead Co-Lawyers urge that the project should nonetheless be endorsed by the Chamber.[3231]

1128. On 19 December 2013, the Chamber noted that the proposal for this project did not contain sufficiently detailed descriptions or an itemized budget and informed the Civil Parties that it would accept supplementary information in this regard until 31 March 2014. The Lead Co-Lawyer's response filed on 31 March 2014 noted international human rights jurisprudence and commentary citing the importance of public monuments as a form of reparations for mass crimes and requested the Chamber to underline the fundamental role of public monuments in the reparations process as it provides the victims a site for commemoration.[3232] No further detail was provided regarding project descriptions, budgets and funding.

[3229] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 91-101; ANNEX 2 Supporting Documents for Project 2: Public Memorials Initiative, E218/7/6.1.2, 8 October 2013.

[3230] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 97-99.

[3231] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 100-101 ; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 9.

[3232] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, paras 9-14.

19.3.3. *Project 3: Construction of a memorial in Phnom Penh to honour the victims of forced evacuations*

1129. With funding from the French Embassy in Cambodia and parliamentarian members of the French-Cambodian Friendship Group of the French National Assembly, this project proposes to engage *Séra*, a French-Cambodian artist, to create a group of sculptures within the *Stat Chas* (Old Stadium) roundabout park in front of Bun Rany Hun Sen High School in Phnom Penh. They are intended to depict the exodus of the Cambodian people from urban areas during the Khmer Rouge regime. This project could commence immediately and be completed before its intended inauguration on 17 April 2015. The full amount required for its realization, USD 88,400, has already been secured and the Phnom Penh Municipality has approved the project.[3233]

19.3.4. *Project 4: Construction of a memorial to Cambodian victims living in France*

1130. Two associations of Khmer Rouge victims and the International Federation of Human Rights (FIDH) propose the construction of a stupa in the pagoda at Vincennes, Paris, to serve as a place of remembrance and acknowledgment for the Cambodian Civil Parties living in France. This project could also commence immediately and be completed within a year.[3234] The City Hall of Paris has approved the project, and 10,000 EUR of the 70,140 EUR project have been pledged. The FIDH has undertaken to finance the remainder of the project by appealing to donors for funding. The Lead Co-Lawyers therefore submit that the Chamber should consider the funding for this

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[3233] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 102-113; ANNEX 3 Supporting Documents for Project 3: Memorial to Khmer Rouge Victims –'For Those Who Are No Longer Here', E218/7/6.1.3, 8 October 2013; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 16; *ANNEXE CONFIDENTIELLE 2 : Documents supplémentaires relatifs au troisième projet: Édification d'un mémorial en hommage aux victimes du régime Khmer Rouge par SÉRA*, E218/7/8.1.2, 31 March 2014.

[3234] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 120; ANNEX 4 Supporting Documents for Project 4: Monument in Memory of the Victims of the Khmer Rouge Regime for Cambodians in France, E218/7/6.1.4, 8 October 2013.

project to be entirely secured.[3235]

19.3.5. ***Project 5: Testimonial Therapy***

1131. The Lead Co-Lawyers propose a project described as testimonial therapy for the victims of crimes in Case 002. This project aims to provide effective treatment of psychological suffering resulting from Khmer Rouge era crimes through the recording of testimonies of traumatic experiences with the assistance of mental health workers. The testimonies recorded during these sessions would later be read out and handed over to the Civil Parties in a ceremony conducted in accordance with the victims' religious or spiritual beliefs and cultural practices. These events would be organized throughout Cambodia in or near the communities where the Civil Parties reside, with the participation of the Civil Parties, other survivors, relatives, community members, religious or spiritual leaders and representatives of governmental and non-governmental agencies. According to the Lead Co-Lawyers, this project would allow victims to process their traumatic experiences, restore their dignity, document human rights violations, and to advocate for their own needs and interests within Cambodia's ongoing transitional justice and reconciliation processes. Part of the project funds would be used to hire and train six psychologists, one of whom would be the project coordinator.[3236]

1132. Projects 5 and 6 were initially proposed for a duration of 16 months in 12 different communities.[3237] The budget was subsequently revised and funding obtained from the Commonwealth of Australia, the German Government and the Swiss *Stiftung*

[3235] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, paras 18-19; *ANNEXE CONFIDENTIELLE 3 : Documents supplémentaires relatifs au quatrième projet: Édification d'un monument en mémoire des victimes du régime des Khmers Rouges pour les cambodgiens de France*, E218/7/8.1.3, 31 March 2014, p. 22, ERN (Fr) 00980937.

[3236] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 127; ANNEXES 5 & 6 Supporting Documents for Projects 5 & 6: Testimonial Therapy and Self-Help Groups, E218/7/6.1.5, 8 October 2013; *cf.* ANNEXES 5 & 6 Supporting Documents for Projects 5 & 6: Testimonial Therapy and Self-Help Groups, E218/7/6.1.5, 8 October 2013, p. 20, ERN (En) 00950965 (indicating *four* psychologists will be trained).

[3237] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 138-139, 142, 155, 157.

Kriegstrauma Therapie for a total project cost of USD 196,522 (for both projects).[3238] Due to budget revisions, the project will be limited to Phnom Penh. The Lead Co-Lawyers are currently seeking additional funding of between USD 800,000-1,000,000 to permit the extension of the project and request the Chamber to consider the entirety of the proposed project as reparations, including the portion that has yet to receive funding.[3239]

19.3.6. ***Project 6: Self-Help Groups***

1133. This award is designed to facilitate self-help groups, which will provide therapy developed by the Transcultural Psychosocial Organisation (TPO), a Non-Governmental Organization active in the mental health field in Cambodia. It is intended to allow victims of forced transfer to express their suffering, promoting a process of healing from their trauma. The project includes six group therapy sessions, with monthly meetings and consultations with a professional therapist over the course of 9 months.[3240] This project has already commenced utilising the funding noted above. An additional USD 1,000,000 is sought for the continuation of this project along with project 5. All participating institutions have expressed their willingness to assist and finance this project.[3241]

19.3.7. ***Project 7: Permanent Exhibition***

1134. The Lead Co-Lawyers propose the establishment of permanent public exhibition spaces in five provinces, which will display photographs, exhibits, documents, audio-visual recordings of Civil Parties and other survivors, artwork,

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[3238] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 21; *ANNEXE CONFIDENTIELLE 4 : Documents supplémentaires relatifs aux cinquième et sixième projets: Témoignages thérapeutiques et Groupes d'entraide*, E218/7/8.1.4, 31 March 2014, p. 1, ERN (En) 00980939.

[3239] ANNEXES 5 & 6 Supporting Documents for Projects 5 & 6: Testimonial Therapy and Self-Help Groups, E218/7/6.1.5, 8 October 2013, pp. 4, 22, ERN (En) 00950949, ERN (En) 00950967.

[3240] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 27; *ANNEXE CONFIDENTIELLE 4 : Documents supplémentaires relatifs aux cinquième et sixième projets: Témoignages thérapeutiques et Groupes d'entraide*, E218/7/8.1.4, 31 March 2014.

[3241] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 156.

historical displays and other interactive resources designed to preserve accounts of the Khmer Rouge era and to educate the public about the Khmer Rouge regime.[3242] Funding for this project has been fully secured. The Lead-Co Lawyers submit that the German Government has pledged EUR 80,000 for this project. All partners in the project have indicated their willingness to collaborate.[3243]

19.3.8. *Project 8: Mobile Exhibition and Education Project: Exploring History and Transitional Justice*

1135. The Lead Co-Lawyers propose the creation of exhibitions and educational initiatives to inform survivors and post-war generations of Cambodians about crimes committed during the Khmer Rouge era. Partners on this project are the Non-Governmental Organizations Kdei Karuna and Youth for Peace, who would implement it, with ADHOC and the Cambodian Defenders Project serving in an advisory capacity.[3244] Funding of EUR 100,000 for the implementation of the first phase of this project in six provinces and for 12 months was provided by the German Government.[3245] Additional funding of USD 23,000 was subsequently obtained permitting an extension of the project to another 3 provinces.[3246]

[3242] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 159-173; CONFIDENTIAL ANNEXES 7 & 9 Supporting Documents for Projects 7 & 9: Permanent Exhebitions in Five Provincial Museums & Redaction of a Specific Chapter on Forced Transfer and the Tuol Po Chrey Execution Site, E218/7/6.1.6, 8 October 2013.

[3243] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 171; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 30.

[3244] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 174-188.

[3245] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 185-186; CONFIDENTIAL ANNEX 8 Supporting Documents for Project 8: Mobile Exhibition Project on Forced Transfer, E218/7/6.1.7, 8 October 2013, p. 7, ERN (En) 00951014.

[3246] CONFIDENTIAL ANNEX 8 Supporting Documents for Project 8: Mobile Exhibition Project on Forced Transfer, E218/7/6.1.7, 8 October 2013; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, paras 32-34; *ANNEXE CONFIDENTIELLE 5 : Documents supplémentaires relatifs au huitième projet: Exposition itinérante*, E218/7/8.1.5, 31 March 2014.

19.3.9. *Project 9: Inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum*

1136. The Lead Co-Lawyers seek to include a chapter on forced population movement and executions at Tuol Po Chrey within a Cambodian teacher's manual. This manual is currently published by DC-Cam (in collaboration with the Cambodian Ministry of Education) and guides the teaching of the history of Democratic Kampuchea in all Cambodian secondary schools.[3247] The Co-Lawyers have submitted the Chapter which is based entirely on the testimony of civil parties and witnesses in Case 002/01.[3248] A project report provided by DC-CAM indicates that the chapter has been carefully drafted "so as to avoid legal conclusions related to the Accused in Case 002 or historical judgments that clearly exceed Case 002/01's investigations into the Democratic Kampuchea regime."[3249] The manual, including the new chapter, would be distributed once the judgment in Case 002/01 is rendered.[3250] The total project cost of USD 57,160 has been provided by the German Development Cooperation (GIZ).[3251]

19.3.10. *Project 10: Construction of a peace learning Centre*

1137. The Lead Co-Lawyers seek to create a community peace learning centre at Samraong Khnong, in Battambang Province which would conduct seminars and training on Khmer Rouge era crimes and the work of the ECCC. It intends to create a

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[3247] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 189-198.

[3248] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 38.

[3249] *ANNEXE CONFIDENTIELLE 6 : Documents supplémentaires relatifs au neuvième projet: Rédaction d'un Chapitre spécifique relatif aux transferts forcés de personnes et au site d'exécution de Tuol Pol Chrey*, E218/7/8.1.6, 31 March 2014, p. 1, ERN (En) 00980953.

[3250] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 197; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, paras 38, 40.

[3251] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 39.

library and to organize excursions for Cambodian youth to execution sites. The Project which remains subject to formal allocation of land, would be implemented by the Youth for Peace Organization and financed by the Swiss Agency for Development and Cooperation.[3252] The funding secured for this project to date, which is sufficient for its realization, amounts to USD 126,000.[3253]

19.3.11. *Project 11: Booklet on Facts Adjudicated in Case 002/01 and Civil Party Participation*

1138. The Lead Co-Lawyers propose the publication of a booklet explaining the judicial process before the ECCC, with a focus on documenting the crimes in Case 002/01 and an explanation of Civil Party participation. It would also include Civil Party statements given during the hearings.[3254] Full funding for this project, amounting to USD 5,000, has been secured through the German Development Cooperation (GIZ).[3255]

19.3.12. *Project 12: Two Editions of the Verdict in Case 002/01*

1139. The Lead Co-Lawyers propose the publication and distribution of two Khmer-language editions of the Case 002/01 verdict, one being the entire judgment and the other a summary version of it. According to the project proposal, USD 30,000 would be required to fully realize this project. To date, sufficient funding has been obtained to publish 4,000 summaries of the judgement and 1,200 (of the proposed 4,000) full

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[3252] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 199-211; CONFIDENTIAL ANNEX 10 Supporting Documents for Project 10: Community Peace Learning Center at Samrong Khnong, E218/7/6.1.8, 8 October 2013.

[3253] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 41; *ANNEXE CONFIDENTIELLE 7 : Documents supplémentaires relatifs au dixième projet: Édification d'un centre d'apprentissage de la paix*, E218/7/8.1.7, 31 March 2014, pp. 17-19, ERN (En) 00980998-1000.

[3254] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 212-221.

[3255] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, para. 220; CONFIDENTIAL ANNEX 11 Supporting Documents for Project 11: Civil Party Stories – An Illustrated Storybook of the Khmer Rouge Victims Participating at the ECCC, E218/7/6.1.10, 8 October 2013, ERN 00951106; *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, para. 43.

text copies for distribution within 9 months of the delivery of the judgement.[3256]

19.3.13. ***Project 13: Inclusion of Civil Party names on the ECCC website***

1140. The Civil Parties seek the inclusion of their names on the ECCC website as an additional means of recording their participation within the Case 002 trial. The Victims' Support Section and the Public Affairs Section would undertake this project, which could be realized within three months of the Case 002/01 verdict at no additional cost.[3257]

19.4. Harm suffered by the Civil Parties

1141. The Accused NUON Chea and KHIEU Samphan have been convicted of crimes against humanity in relation to movement of population (phases one and two) and executions at Tuol Po Chrey. Internal Rule 23*quinquies*(1) requires that reparations awarded by the Chamber acknowledge and address the harm suffered by Civil Parties as a result of the commission of these crimes.

1142. Thirty-one Civil Parties appeared before the Chamber in the course of Case 002/01. From 27 May 2013 to 4 June 2013, the Chamber set aside four trial days to hear oral evidence from Civil Parties specifically about the ways in which they suffered during the DK period. The Chamber also heard testimony from Expert CHHIM Sotheara, a psychologist and mental health professional with experience working with victims of the Khmer Rouge regime (including Civil Parties), who discussed the psychological impact of events during the DK period on those victims. Finally, many Civil Parties provided written accounts of injuries they suffered and crimes they witnessed during the DK era in their Civil Party applications, to which the

[3256] *Deuxième complément d'informations à la demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/8, 31 March 2014, paras 49-50; *ANNEXE CONFIDENTIELLE 8 : Documents supplémentaires relatifs au douzième projet: Édition et diffusion du Jugement à venir en intégralité et en résumé*, E218/7/8.1.8, 31 March 2014, p. 3, ERN (En) 00981004; *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 223-226; CONFIDENTIAL ANNEXES 12 & 13 Supporting Documents for Projects 12 & 13: Publication of the Judgment and Publication of Civil Party Names, E218/7/6.1.9, 8 October 2013.

[3257] *Demande définitive de réparations des co-avocats principaux pour les parties civiles en application de la règle 80*bis *du Règlement intérieur et annexes confidentielles*, E218/7/6, 8 October 2013, paras 227-229.

Chamber also had regard.

1143. The evidence given by the Civil Parties painted a vivid picture of the ways in which they suffered as a result of the crimes committed by the Accused.

1144. In the days following 17 April 1975, many Civil Parties feared for their lives when the Khmer Rouge soldiers forced them to evacuate the city.[3258] They had to abandon their homes and most of their material possessions.[3259] Some were told to pack only for a short journey, as they would be returning to Phnom Penh after three days.[3260] Civil Parties LAY Bony and OR Ry brought only money, assuming – wrongly – that they would be able to use currency to buy what they needed.[3261] Other Civil Parties took vehicles or goods with them but frequently had them confiscated or appropriated by Khmer Rouge soldiers as they left the city.[3262] In any case without fuel, cars or motorbikes quickly became useless and had to be abandoned. Still others left behind items of significant sentimental value, and therefore lost both their belongings and also cherished mementoes important to their personal identities.[3263]

1145. The evacuation of the population took place in April, during the dry season. Forced to walk long distances under the heat of the sun, many Civil Parties suffered physical pain and extreme discomfort.[3264] This was compounded by the lack of food, water and opportunities to rest; Civil Parties who gave evidence before the Chamber

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[3258] *See e.g.* T. 19 October 2012 (YIM Sovann), pp. 90-91; T. 24 October 2012 (LAY Bony), pp. 23, 25; T. 27 May 2013 (SOU Sotheavy), p. 15; T. 29 May 2013 (THOUCH Phandarasar), p. 5; T. 29 May 2013 (HUO Chantha), p. 71; T. 29 May 2013 (CHAN Sopheap), p. 43; T. 4 June 2013 (BAY Sophany), p. 8. *See also,* Section 10: Movement of the Population (Phase One), paras 468, 471-474.

[3259] *See e.g.* T. 14 November 2012 (MEAS Saran), pp. 105-106; T. 27 May 2013 (SOU Sotheavy), p. 11; T. 29 May 2013 (CHHENG Eng Ly), p. 93; T. 29 May 2013 (HUO Chantha), p. 71; T. 30 May 2013 (SOPHAN Sovany), p. 45; T. 30 May 2013 (PO Dina), p. 96. *See also,* Section 10: Movement of the Population (Phase One), para. 466.

[3260] *See e.g.* T. 22 October 2012 (CHUM Sokha), p. 98; T. 24 October 2012 (LAY Bony), p. 23; T. 6 November 2012 (MOM Sam Oeurn), p. 7; T. 14 November 2012 (MEAS Saran), p. 105; T. 22 November 2012 (OR Ry), p. 99; T. 23 November 2012 (CHAU Ny), p. 47; T. 4 December 2012 (TOENG Sokha), pp. 39-40; T. 5 December 2012 (PECH Srey Phal), p. 18; T. 30 May 2013 (SOPHAN Sovany), p. 46. *See also,* Section 10: Movement of the Population (Phase One), paras 465-466.

[3261] T. 23 October 2012 (LAY Bony), p. 87; T. 24 October 2012 (LAY Bony), p. 24; T. 22 November 2012 (OR Ry), p. 100.

[3262] *See e.g.* T. 22 October 2012 (CHUM Sokha), p. 39; T. 6 November 2012 (MOM Sam Oeurn), p. 14; T. 4 December 2012 (TOENG Sokha), p. 44; T. 5 December 2012 (PECH Srey Phal), p. 26; T. 7 February 2013 (PIN Yathay), p. 24; T. 29 May 2013 (THOUCH Phandarasar), pp. 5-6; T. 30 May 2013 (NOU Hoan), p. 27. *See also,* Section 10: Movement of the Population (Phase One), para. 484.

[3263] *See e.g.* T. 4 June 2013 (BAY Sophany), pp. 19-20; T. 30 May 2013 (NOU Hoan), p. 11.

[3264] *See e.g.* T. 23 October 2012 (LAY Bony), p. 87; T. 30 May 2013 (NOU Hoan), p. 6; T. 4 June 2013 (BAY Sophany), p. 9. *See also,* Section 10: Movement of the Population (Phase One), para. 491.

reported experiencing severe hunger, thirst and exhaustion.[3265] Many were reduced to eating whatever they could find *en route* and drinking dirty water.[3266] They slept wherever they could find shelter, but frequently had to lie on the ground under trees or out in the open.[3267] No medicine or healthcare was available; Civil Parties LAY Bony, PECH Srey Phal, YOS Phal, CHHENG Eng Ly and BAY Sophany described how they or their family members fell ill and, in some cases, died.[3268] Some Civil Parties recalled that their journeys into the countryside – and all the attendant privation – continued for up to a month.[3269]

1146. During the long march out of Phnom Penh, many Civil Parties witnessed harrowing events. They walked past the bodies of the dead and dying.[3270] Civil Party YIM Sovann, who was a teenager in 1975, reported that she was "traumatized" by the sight of the corpses; Civil Party LAY Bony similarly remembered being "terrified and shocked" by them.[3271] As he travelled further away from the capital, and evacuees increasingly succumbed to exhaustion, Civil Party PIN Yathay eventually became accustomed to the sight of the dead bodies on the roadside.[3272] Civil Parties also saw adults and children suffering from illness and malnutrition, and people who had

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[3265] *See e.g.* T. 23 October 2012 (LAY Bony), p. 92; T. 22 November 2012 (OR Ry), p. 100; T. 5 December 2012 (PECH Srey Phal), p. 24; T. 5 December 2012 (KIM Vanndy), pp. 100, 101; T. 27 May 2013 (SOU Sotheavy), p. 16; T. 27 May 2013 (YOS Phal), p. 77; T. 27 May 2013 (AUN Phally), p. 34; T. 30 May 2013 (NOU Hoan), p. 7; T. 30 May 2013 (YIM Roumdoul), p. 88; T. 30 May 2013 (PO Dina), pp. 96, 98; T. 4 June 2013 (SENG Sivutha), p. 97. *See also,* Section 10: Movement of the Population (Phase One), paras 487-488, 491.

[3266] *See e.g.* T. 29 May 2013 (HUO Chantha), p. 73; T. 30 May 2013 (SOPHAN Sovany), p. 46. *See also,* Section 10: Movement of the Population (Phase One), para. 487.

[3267] *See e.g.* T. 22 November 2012 (OR Ry), p. 101; T. 5 December 2012 (PECH Srey Phal), p. 24; T. 5 December 2012 (KIM Vanndy), p. 97; T. 29 May 2013 (HUO Chantha), p. 72. *See also,* Section 10: Movement of the Population (Phase One), para. 488.

[3268] T. 23 October 2012 (LAY Bony), pp. 93-95; T. 5 December 2012 (PECH Srey Phal), p. 25; T. 27 May 2013 (YOS Phal), p. 77; T. 29 May 2013 (CHHENG Eng Ly), p. 93; T. 4 June 2013 (BAY Sophany), pp. 9-12. *See also,* Section 10: Movement of the Population (Phase One), paras 491, 498.

[3269] *See e.g.* T. 22 October 2012 (CHUM Sokha), p. 47; T. 30 May 2013 (NOU Hoan), p. 24.

[3270] *See e.g.* T. 19 October 2012 (YIM Sovann), p. 82; T. 22 October 2012 (CHUM Sokha), p. 37; T. 23 October 2012 (LAY Bony), p. 91; T. 24 October 2012 (LAY Bony), p. 28; T. 6 November 2012 (MOM Sam Oeurn), p. 9; T. 23 November 2012 (CHAU Ny), p. 47; T. 4 December 2012 (TOENG Sokha), pp. 43, 44; T. 5 December 2012 (PECH Srey Phal), pp. 19-20; T. 12 December 2012 (Denise AFFONÇO), p. 104; T. 27 May 2013 (SOU Sotheavy), pp. 12, 15; T. 27 May 2013 (YOS Phal), p. 76; T. 30 May 2013 (SOPHAN Sovany), p. 46; T. 30 May 2013 (NOU Hoan), p. 25; T. 30 May 2013 (PO Dina), p. 98; T. 4 June 2013 (BAY Sophany), p. 9; T. 4 June 2013 (SENG Sivutha), pp. 97, 105-106; T. 4 June 2013 (SOEUN Sovandy), p. 57. *See also,* Section 10: Movement of the Population (Phase One), paras 497, 499.

[3271] T. 19 October 2012 (YIM Sovann), p. 82; T. 23 October 2012 (LAY Bony), p. 92.

[3272] T. 7 February 2013 (PIN Yathay), p. 51.

sustained terrible injuries, reportedly as a result of assault or rape.[3273] In some cases, Civil Parties watched as Khmer Rouge soldiers brutally killed other evacuees, including infants.[3274] Other Civil Parties were themselves threatened, held at gunpoint or beaten by soldiers as they left their homes and travelled out of Phnom Penh.[3275]

1147. In the chaos of the evacuation, some Civil Parties were separated from the other members of their family.[3276] As he left Phnom Penh, Civil Party MEAS Saran searched in vain for his pregnant wife; unable to find her in the city, he never saw her again.[3277] Other Civil Parties were separated from their relatives shortly after their arrival at the new locations.[3278]

1148. Those Civil Parties involved in the second movement of the population reported experiencing similar hardships which for most of them had even worse consequences due to their already weakened state caused by the first forced transfer. They were forced onto crowded trains and trucks;[3279] Civil Party CHAU Ny and his family did not know whether they were being taken away to be executed.[3280] Food, clean water, medicine and medical care were generally not provided.[3281] Some Civil Parties witnessed the killing of other evacuees by Khmer Rouge soldiers.[3282] Civil

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[3273] *See e.g.* T. 27 May 2013 (SOU Sotheavy), p. 11; T. 27 May 2013 (YOS Phal), p. 76; T. 29 May 2013 (THOUCH Phandarasar), p. 6; T. 30 May 2013 (YIM Roumdoul), p. 87. *See also,* Section 10: Movement of the Population (Phase One), paras 489, 492.

[3274] *See e.g.* T. 19 October 2012 (YIM Sovann), p. 83; T. 7 February 2013 (PIN Yathay), p. 51; T. 27 May 2013 (YOS Phal), p. 76; T. 29 May 2013 (CHHENG Eng Ly), p. 98. *See also,* Section 10: Movement of the Population (Phase One), para. 490.

[3275] *See e.g.* T. 24 October 2012 (LAY Bony), pp. 26-27; T. 6 November 2012 (MOM Sam Oeurn), p. 7; T. 27 May 2013 (AUN Phally), p. 34. *See also,* Section 10: Movement of the Population (Phase One), para. 489.

[3276] *See e.g.* T. 5 December 2012 (PECH Srey Phal), pp. 16-17; T. 12 December 2012 (Denise AFFONÇO), pp. 102-103; T. 30 May 2013 (NOU Hoan), p. 6; T. 4 June 2013 (SOEUN Sovandy), p. 52. *See also,* Section 10: Movement of the Population (Phase One), paras 481, 483.

[3277] T. 14 November 2012 (MEAS Saran), pp. 103-105; T. 22 November 2012 (MEAS Saran), pp. 3, 30, 35-36.

[3278] *See e.g.* T. 27 May 2013 (AUN Phally), pp. 35, 38; T. 4 June 2013 (SENG Sivutha), p. 106.

[3279] *See e.g.* T. 23 November 2012 (CHAU Ny), pp. 58-59; T. 4 December 2012 (TOENG Sokha), p. 50; T. 5 December 2012 (PECH Srey Phal), p. 47; T. 7 February 2013 (PIN Yathay), p. 7; T. 29 May 2013 (THOUCH Phandarasar), p. 7. *See also,* Section 11: Movement of the Population (Phase Two), paras 596-598.

[3280] T. 23 November 2012 (CHAU Ny), p. 60.

[3281] *See e.g.* T. 5 December 2012 (PECH Srey Phal), p. 46; T. 12 December 2012 (Denise AFFONÇO), pp. 88, 109-110. *See also,* Section 11: Movement of the Population (Phase Two), paras 591-592, 597.

[3282] *See e.g.* T. 5 December 2012 (PECH Srey Phal), p. 73; T. 29 May 2013 (CHAN Sopheap), p. 44. *See also,* Section 11: Movement of the Population (Phase Two), para. 595.

Party AUN Phally recalled seeing dead bodies left on the road.[3283] Some Civil Parties' families were separated on arrival at the new locations.[3284]

1149. Amongst the Civil Parties admitted in Case 002, there were also a number of victims who claimed that their relatives – generally soldiers or officials under the LON Nol regime – were among those executed at Tuol Po Chrey.[3285] Other Civil Parties described the disappearance of family members who had worked for the LON Nol administration; although they did not know how or where their relations died, the circumstances of the disappearances suggested to the Chamber that at least some of them may also have been killed at Tuol Po Chrey.[3286]

1150. Having heard expert evidence, the Chamber is satisfied that the suffering inflicted on the Civil Parties as a result of the crimes committed by the Accused has contributed to the symptoms of long-term psychological damage reported by a great number of them.[3287] Expert CHHIM Sotheara explained that in many cases, the experiences of victims of the Khmer Rouge caused lasting trauma, with symptoms such as nightmares, post-traumatic stress disorder, depression, anxiety and paranoia.[3288] Post-traumatic stress disorder can manifest itself through vivid recollections of past events; a reluctance to discuss or revisit the past; physical trembling; and insomnia.[3289] The Chamber finds that, as a consequence of the crimes of which the Accused have been convicted, the Civil Parties and a very large number of additional victims, have suffered immeasurable harm, which includes physical suffering, economic loss, loss of dignity, psychological trauma and grief arising from

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[3283] T. 27 May 2013 (AUN Phally), p. 40.
[3284] *See e.g.* T. 12 December 2012 (Denise AFFONÇO), p. 90; T. 30 May 2013 (YIM Roumdoul), p. 70. *See also*, Section 11: Movement of the Population (Phase Two), para. 601.
[3285] *See e.g.* YIM Sav Civil Party Application, E3/5347, 23 May 2008; CHEA Sokh Rath Civil Party Application, E3/5349, 23 May 2008; SOEUN Sokh Civil Party Application, E3/5353, 27 May 2008; *See* Section 12: Tuol Po Chrey, paras 668, 672.
[3286] *See e.g.* HEM Saran Civil Party Application, E3/4808, 7 November 2008; TES Bopha Civil Party Application, E3/4811, 6 April 2010; CHEY Yan Civil Party Application, E3/4857, 14 June 2010.
[3287] *See e.g.* T. 5 June 2013 (CHHIM Sotheara), p. 83 (discussing the psychological impact of losing loved ones); T. 5 June 2013 (CHHIM Sotheara), pp. 93-94 (discussing the psychological effects of relocation); T. 5 June 2013 (CHHIM Sotheara), pp. 95-96 (discussing the psychological impact of witnessing traumatic events); T. 5 June 2013 (CHHIM Sotheara), p. 98 (discussing the psychological effects of hunger).
[3288] T. 5 June 2013 (CHHIM Sotheara), pp. 68-69.
[3289] T. 5 June 2013 (CHHIM Sotheara), p. 70.

the loss of family members or close relations.[3290]

19.5. Assessment of all awards sought by the Lead Co-Lawyers

1151. The Chamber acknowledges that the following awards which meet the requirements of Internal Rule 23*quinquies*(3)(b) address the harm suffered by victims and provide moral and collective reparations to the Civil Parties. These projects appropriately give effect to the award sought by the Lead Co-Lawyers and may be implemented.

19.5.1. *Projects concerning Remembrance and Memorialisation: Projects 1, 3*

1152. The Trial Chamber has previously observed that other international bodies have characterised as reparation comparable, official acknowledgements of suffering of considerable symbolic significance for victims.[3291] The Chamber agrees with the Lead Co-Lawyers that the provision of an official national holiday amounts to a nationwide and official acknowledgement of the harm suffered by the victims. Public memorials may further assist to restore the dignity of victims, provide public acknowledgement of the crimes committed and harm suffered, and assist in healing the wounds of all victims by diffusing their effects far beyond the individuals who were admitted as Civil Parties.[3292] Both initiatives are further likely to encourage learning and knowledge about the crimes committed during the Khmer Rouge regime, to promote a culture of peace and to contribute to national reconciliation.[3293]

1153. In view of the Royal Government of Cambodia's expressed willingness to declare 20 May as an annual day of remembrance and official public holiday, no specific financial outlay appears to be required in order to give effect to this initiative. In relation to the second project, all funding required for its implementation has already been secured and the Phnom Penh municipality has agreed to the proposed location of the memorials. Further, the implementing actors for this latter project

[3290] Section 18: Sentencing, para. 1077.
[3291] *KAING Guek Eav* Trial Judgement, para. 667.
[3292] *KAING Guek Eav* Appeal Judgement, para. 683.
[3293] *KAING Guek Eav* Appeal Judgement, para. 683.

(namely the French Embassy, the French-Cambodian Friendship Group of the French National Assembly and *Séra*) have formally indicated willingness to realize it. The Chamber consequently endorses projects 1 and 3.

19.5.2. *Projects Concerning Therapy and Psychological Assistance to Victims: Projects 5, 6*

1154. The Chamber also finds that projects 5 and 6, which are intended to provide psychological assistance to victims, comprise "collective and moral" reparations within the scope of the ECCC's legal framework and otherwise satisfy the requirements of Internal Rule 23*quinquies*. The Supreme Court Chamber has also previously acknowledged that provision of psychological care constitutes an appropriate form of reparation.[3294] In addition, the public ceremonies contemplated in the aftermath of project 5 are also likely to promote public awareness of the harm suffered by the victims of Khmer Rouge era crimes and thereby may contribute to national reconciliation.

1155. Finally, the Chamber notes that the Civil Party Lead Co-Lawyers have demonstrated that the required funding has been secured for that portion of the projects set in Phnom Penh and that the partners to these projects have committed to ensuring that they are implemented. It therefore endorses projects 5 and 6. Although funding has not yet been secured for extension of the project outside Phnom Penh, the Chamber approves its extension to the extent that additional funds allow.

19.5.3. *Documentation and Education: Projects 7, 8, 9, 10, 11, 12 and 13*

1156. In relation to projects 7, 8, 10 and 11, all of which concern documentation and education, the Chamber notes these projects also comply with the requirements of Internal Rule 23*quinquies* and are of a collective and moral nature. Public education regarding the suffering of victims and the nature of the Khmer Rouge regime is further likely to advance the goals of acknowledgment, remembrance, and awareness of the crimes committed and the suffering resulting therefrom and is therefore likely

[3294] *KAING Guek Eav* Appeal Judgement, para. 701.

to benefit not only the Civil Parties, but also to generally contribute to national reconciliation. The Chamber notes that funding for the implementation of these projects has been secured and that the partners to those projects have all expressed their willingness to assist in their realisation.

1157. In relation to project 9, the Trial Chamber's earlier direction "remind[ed] the Civil Parties that the Chamber is unable to endorse any book chapter on facts that are currently under judicial consideration and need to be finally adjudicated."[3295] The Lead Co-Lawyers have nonetheless submitted the proposed chapter they assert has avoided making legal conclusions in particular regarding the responsibility of the Accused in Case 002/01 and asks the Chamber to reconsider its prior direction. The Chamber recognises that providing the schools with an accurate basis for the discussion of events during the Democratic Kampuchea era is a laudable goal and that the evidence of Civil Parties and Witnesses in the Chapter is helpful in this regard. The Chamber emphasises however that the determination of the criminal responsibility of the Accused and the factual findings are the sole prerogative of the ECCC and depend upon an assessment of witness and civil party credibility. The contents of the book chapter must be understood in this context. It would therefore be appropriate to append a disclaimer to the Chapter, and the Chamber so directs.[3296] With this proviso, the Chamber endorses project 9.

1158. In relation to projects 12 and 13, the Civil Parties request that names be included in the final judgement in Case 002. When faced with a similar request in Case 001, the Chamber noted that such measures were technically beyond the scope of reparations available under the ECCC legal framework as it then existed. The Chamber nonetheless observed in its Case 001 Judgement that the ECCC alone was capable of honouring these requests and that other international bodies have characterised comparable, official acknowledgements of suffering as reparation of

[3295] Trial Chamber's Subsequent and Final Order on the Updated Specifications of the Civil Party Priority Projects as Reparations pursuant to Rule 81*bis*(4) (E218/7/3), E218/7/4, 11 September 2013, para. 8.

[3296] The Chamber considers a disclaimer such as the follows to be appropriate: "This Chapter is based upon civil party and witness testimony before the ECCC. The determination of the guilt or innocence of the Accused NUON Chea and KHIEU Samphan as reflected in the Trial Chamber Judgement and, if appropriate, confirmed or amended by the Supreme Court Chamber, is the sole legally binding account of the events relayed in this chapter."

considerable symbolic significance for victims. As they provide tangible means by which the collective suffering of victims may be acknowledged, the Chamber therefore granted these, and similar requests.[3297] The Chamber reiterates that public provision of the judgement and information surrounding Case 002 may contribute to reconciliation initiatives within Cambodian society at large and public education.[3298]

1159. The Chamber notes the willingness of the Victims' Support and Public Affairs Sections to include the names of all Civil Parties in Case 002 on the ECCC website, and similarly endorses the Public Affairs Sections' distribution of the Case 002/01judgement – to the extent possible within resources obtained to date – as valuable measures of reparation within the meaning of Internal Rule 23*quinquies*(3).

1160. Consequently, the Chamber endorses projects 7, 8, 9, 10, 11, 12 and 13.

19.5.4. ***Projects not endorsed by the Chamber: Projects 2 and 4***

1161. Although the Chamber considers that the awards sought in projects 2 and 4 may well appropriately address the harm suffered by victims and may provide moral and collective reparations to the Civil Parties' suffering, Internal Rule 23*quinquies*(3)(b) requires the Lead Co-Lawyers, as a condition of judicial endorsement of any award, to demonstrate that all projects have secured sufficient external funding.

1162. While the Chamber expressly noted that Project 2 did not contain sufficiently detailed descriptions or an itemized budget, no significant other supplementary information, such as the proposed locations of the memorials contemplated or the agreement of any involved third parties, has subsequently been provided.

1163. The Chamber acknowledges the efforts made to give concrete expression to Project 4. It notes the approval given by City Hall of Paris and the progress in pledges. However, so far as the Chamber is aware, the fundraising operation is at this stage still ongoing. While FIDH has undertaken to continue its search for resources to fund this project, this commitment does not guarantee that financing will in fact be

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[3297] *KAING Guek Eav* Trial Judgement, paras 667-668.
[3298] *KAING Guek Eav* Trial Judgement, para. 669.

obtained. Therefore, the Chamber cannot endorse this project as it has not been fully demonstrated that sufficient external funding has yet been secured.

1164. The Chamber generally welcomes any initiative that offers support to the victims, keeps their memory alive, acknowledges their suffering and awakens public awareness to avoid repetition of acts such as those that occurred. The Chamber also wishes to remind donors that they have the option to support measures that have not been specifically endorsed in this judgement.

20. DISPOSITION

FOR THE FOREGOING REASONS, having considered all the evidence and the submissions of the Parties, the Trial Chamber decides as follows:

PURSUANT TO Articles 5, 29 (new) and 39 (new) of the ECCC Law, the Trial Chamber finds the Accused **NUON Chea** to be **GUILTY** of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed within the territory of Cambodia between 17 April 1975 and the end of 1977. On the basis of the foregoing, the Chamber sentences NUON Chea to a single sentence of **LIFE IMPRISONMENT**.

PURSUANT TO Articles 5, 29 (new) and 39 (new) of the ECCC Law, the Trial Chamber finds the Accused **KHIEU Samphan** to be **GUILTY** of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed within the territory of Cambodia between 17 April 1975 and the end of 1977. On the basis of the foregoing, the Chamber sentences KHIEU Samphan to a single sentence of **LIFE IMPRISONMENT**.

DECLARING the consolidated group of Civil Parties, individually listed in Annex 2, to have suffered harm as a direct consequence of the crimes for which NUON Chea and KHIEU Samphan have been convicted, and pursuant to Internal Rule 23*quinquies*(3)(b), the Chamber grants, in part, the Civil Party Lead Co-Lawyers' requests for moral and collective reparations. As set out in detail in Section 19 of this judgement, the Chamber endorses, as projects giving appropriate effect to the award sought and which may be implemented, 11 projects concerning remembrance of the victims and memorialisation of the suffering endured, therapy and psychological assistance to the victims, and documentation and education. The Chamber denies requests concerning two projects which fail to satisfy the requirements of Internal Rule 23*quinquies*(3)(b) (Section 19).

The Chamber declares that Nuon Chea was taken into Pre-Trial detention on 19

September 2007 and that Khieu Samphan was taken into Pre-Trial detention on 19 November 2007 and that both Accused have remained in detention until the delivery of the verdict and sentence on 7 August 2014. This judgement, which was pronounced publicly on 7 August 2014, is appealable by the Parties in accordance with the Internal Rules. Given the gravity of the crimes for which they have been convicted, and subject to any order of the Supreme Court Chamber, NUON Chea and KHIEU Samphan shall remain in detention until this judgement becomes final.

Done in Khmer, English and French.
Dated this 7th day of August 2014
At Phnom Penh
Cambodia

Greffiers

LIM Suy Hong Matteo CRIPPA

Judge NIL Nonn
Presiding

Judge Silvia CARTWRIGHT

Judge YA Sokhan

Judge Jean-Marc LAVERGNE

Judge YOU Ottara